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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EUGENE WZOREK,

Plaintiff,

v.

THE CITY OF CHICAGO,

Defendant

)
) Docket No. 84 C 9978
)
) Chicago, Illinois
) July 5, 1988
) 10:00 a.m.
)
)
)
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BRIAN BARNETT DUFF

PRESENT:

For the Plaintiff: EUGENE WZOREK (Pro Se)

For the Defendant: MITCHELL EX
MARY SMITH
Assistant Corporation Counsel
610 City Hall
Chicago, Illinois 60602

Court Reporter: Lois A. LaCorte
219 South Dearborn
Chicago, Illinois 60604

1 THE CLERK: 84 C 9978.

2 MR. WZOREK: Your Honor, may I have him help me with
3 -- he is not involved in the case at all and John is at work.
4 He will be here later.

5 THE COURT: Who is this gentleman?

6 MR. WZOREK: He is a friend of my sons.

7 MR. FILAR: I'm here to give him support and push
8 papers.

9 THE COURT: You can help at counsel's table.

10 MR. WZOREK: Your Honor, can I approach the bench
11 with counsel on some things I see here and I don't --

12 THE COURT: I don't know what you're talking about,
13 sir.

14 MR. WZOREK: That's what I mean. I don't know what
15 this is here.

16 THE COURT: Just a minute. Let's start right.

17 MR. WZOREK: Okay. Could I approach the bench with
18 counsel?

19 THE COURT: Just a minute.

20 MR. WZOREK: Oh, okay.

21 THE COURT: Let me start things right. All right.

22 THE CLERK: 84 C 9978, Wzorek v. City of Chicago,
23 case on trial.

24 THE COURT: All right. Mr. Wzorek is present
25 representing himself and has an assistant at counsel table.

1 Ms. Smith.

2 MS. SMITH: Mary Smith for the defendants.

3 MR. EX: Charles Ex, E-x, also for the defendants.

4 MS. BROCK: Yona Brock, legal assistant.

5 THE COURT: Now, Mr. Wzorek, what did you have for
6 the Court?

7 MR. WZOREK: Your Honor, sir, I got stuff from as you
8 told me to take care of Mr. Mitchell Friday and pick up some
9 stuff. I got documents here, summary judgments and stuff
10 like that, and this is not the ones I seen when I was in my
11 lawyer's office. They also got different case numbers all
12 over them.

13 THE COURT: Excuse me, let me see if I understand
14 what you're saying. Do you have to wear those sunglasses?

15 MR. WZOREK: Oh, sorry, Judge. I forgot I had them
16 on. I was going to take them off. Nervous habit.

17 THE COURT: That's all right. I wouldn't expect you
18 to be calm, Mr. Wzorek, representing yourself, but you're
19 doing all right. Now, let's see, you asked for something?

20 MR. WZOREK: Yes. I got, you know, their summary
21 judgments which I never had. It was one of the documents
22 that was missing. This was put on by Terrance Mitchell.

23 THE COURT: You say "their summary judgments"?

24 MR. WZOREK: Yes.

25 THE COURT: I'm not sure what you mean when you say

1 summary judgments.

2 MR. WZOREK: Memorandum reply to petitioner's
3 memorandum in opposition to motion for summary judgment and
4 then there --

5 THE COURT: Would you hand those things to Ms.
6 Brotherson for a moment. Thank you.

7 Now, you asked for these things?

8 MR. WZOREK: Yes, from Mr. Mitchell.

9 THE COURT: Oh, I see, yes, you got them from your
10 lawyer.

11 MR. WZOREK: Right, and I don't understand this
12 because when I was at my lawyer's office, your Honor, these
13 are letters from them because they said to tell you that they
14 don't know nothing about the missing documents.

15 THE COURT: You mean the other documents?

16 MR. WZOREK: Yes, or exhibits.

17 THE COURT: Give those to Mrs. Brotherson.

18 MR. WZOREK: These are the letters from the
19 attorneys. I think this is an extra one.

20 What I don't understand, your Honor --

21 THE COURT: Give it to Ms. Brotherson.

22 All right. Now, you asked your lawyers for some
23 documents which they had received in discovery from the City.

24 MR. WZOREK: Right.

25 THE COURT: And I told them to give them to you.

1 MR. WZOREK: Right.

2 THE COURT: And this is everything they gave you?

3 MR. WZOREK: No, they gave gave me some more stuff,
4 your Honor, but I brought what was relevant today. They
5 brought me some exhibits. I got other stuff.

6 What I don't understand is that's not the summary
7 judgment that I seen, the City's motion for summary judgment
8 in my lawyer's office, because in my lawyer's office it had
9 the right case number on it. Those things don't have the
10 right case number on them.

11 THE COURT: What is the right case number?

12 THE CLERK: 84 C 9978.

13 THE COURT: No, they don't.

14 MR. WZOREK: And one of the parts from the summary
15 judgment is missing because when when I was in my lawyer's
16 office --

17 THE COURT: Which lawyer?

18 MR. WZOREK: Harry Schroeder. That was back in '86.
19 Me and John were there to sign affidavits for the summary
20 judgment.

21 THE COURT: Yes.

22 MR. WZOREK: And it said in there Ms. Smith said that
23 someone of no importance fired me, and I looked in that thing
24 and I didn't find it, and then on top of it I knew it's not
25 the ones because they don't have the right case number.

*This is
where they
switched
the
cases*

1 THE COURT: Well, Mr. --

2 MR. WZOREK: That's John McGowan's case number.

3 THE COURT: Were the cases ever consolidated, Ho.

4 Smith?

5 MS. SMITH: No, your Honor, they were not.

6 THE COURT: For discovery or trial?

7 MS. SMITH: Never. They were always separate cases.

8 McGowan has been disposed of.

9 THE COURT: Was McGowan in front of Judge Parsons?

10 MS. SMITH: I don't recall, your Honor.

11 THE COURT: Was it in front of Judge Decker?

12 MS. SMITH: We have a memorandum opinion granting
13 summary judgment. We could check to see which judge ruled on
14 that motion.

15 THE COURT: Well, these things are all in front of
16 Judge Decker. I think I must have gotten this case from
17 Judge Decker. 84 C 4705, what's that?

18 MR. WZOREK: I think that's John McGowan's or
19 somebody else's. I don't understand.

20 THE COURT: Well, first of all, I don't know that
21 this makes any difference to your case at the moment.

22 MR. WZOREK: Well, I just asked, your Honor, because
23 I don't know -- oh, sorry.

24 THE COURT: This may have something to do with
25 whether or not you have a malpractice suit against some

1 lawyer, I don't know what's gone on in your case, but it
2 doesn't make any difference in this trial that I can see.

3 MR. WZOREK: Okay.

4 THE COURT: Now, if it does, there may be some
5 opportunity for you to review that, and so any ruling I'll
6 make now will be without prejudice to any matter that may
7 become effective here in terms of behavior either of the City
8 or of your lawyers, but you see, the City is not responsible
9 for your lawyer's behavior, the City is responsible only for
10 the City's behavior.

11 So we will take all that, or you keep all that.

12 MR. WZOREK: Okay.

13 THE COURT: And you perhaps will have some
14 opportunity to talk to a lawyer after this is all over -- I'm
15 not sure about that -- but I don't see that getting in the
16 way of this trial.

17 MR. WZOREK: No, I just meant it was the City's stuff
18 so I didn't know what it was. The City sent it in.

19 THE COURT: Well, you can talk to Ms. Smith, Ms.
20 Smith is a responsible attorney, and she will help you
21 clarify what these things are if she knows, won't you, Ms.
22 Smith?

23 MS. SMITH: I certainly will, and for the record,
24 Judge, the McGowan case was before Judge Grady.

25 THE COURT: Well, but those documents have different

1 numbers than this case, but with Mr. Wzorek's name, totally
 2 different numbers, and one in front of Judge Parsons with an
 3 '84 number and one in front of Judge Decker with an '84
 4 number -- both numbers far away from this number, and
 5 something is wrong.

6 MS. SMITH: I don't know what documents those are,
 7 but --

8 THE COURT: I don't expect you to be able to figure
 9 it out from there, but you will get a look at them before the
 10 day is over.

11 MS. SMITH: That's fine.

12 THE COURT: Now, Mr. Wzorek, back to this letter of
 13 Mr. Mitchell to Mr. Schroeder. Why is that important to me?

14 MR. WZOREK: Sir, he asked for the '84 evaluations or
 15 if Mr. Schroeder had ever got '84 evaluations and Mr.
 16 Schroeder replies to him that he didn't get the '84
 17 evaluations, the City said they lost them, not about a May
 18 3rd or anything like that. It says in there that they lost
 19 two ratings, so that's far different from --

20 THE COURT: Then you better get Mr. Schroeder in here
 21 to testify to that or by affidavit, one or the other.

22 MR. WZOREK: I can call him then?

23 THE COURT: Unless the City is willing to stipulate
 24 that they did that.

25 MR. WZOREK: And also it states in there that the

*Dull knew
 something was
 wrong here
 I's obvious
 who should
 have done*

1 Daley check that I gave has two different exhibit numbers on
2 it. That's on the last page of Schroeder's answer.

3 THE COURT: Well, the number of exhibit numbers
4 doesn't make any difference. That's just to keep track of
5 them. But the key thing you have there is Mr. Schroeder says
6 he asked the City for the documents and the City said no,
7 they didn't have them, that they lost them, and maybe the
8 City would stipulate to that.

9 Would the City stipulate to that?

10 MS. SMITH: To which documents is he referring, your
11 Honor?

12 MR. WZOREK: Can I show her?

13 THE COURT: Yes.

14 (Pause.)

15 THE COURT: Ms. Smith, what you could do, I don't
16 know what the City's response to that is, but you could
17 stipulate that if Mr. Schroeder were called he would testify
18 that the City told him they lost them.

19 MS. SMITH: Well, part of the problem there, your
20 Honor, is that I was not the attorney for the City at the
21 time.

22 THE COURT: No, but you see Mr. Schroeder's letter to
23 -- from one lawyer to another.

24 MS. SMITH: I do. I would be willing to stipulate
25 to the fact that the City maintains that the March 1984

1 evaluation could not be found, but that further it was not a
2 basis for -- it was not a factor in any decisions to
3 discharge employees in June of that year and that there was
4 no second evaluation pursuant to the first Pounian memo ever
5 done in 1948, so we would stipulate that a March 1984
6 evaluation was not found.

7 THE COURT: Which said 85 percent?

8 MS. SMITH: I think Dr. Pounian testified there was
9 no numerical rating, your Honor. He said it was an
10 evaluation that stated "Exceeds Requirements, Meets
11 Requirements," or "Does Not Meet Requirements," so I would
12 not stipulate that it was an 85 rating, your Honor.

13 MR. WZOREK: Well, your Honor, as far as that goes,
14 even if he is a doctor or whatever he is, I have witnesses
15 that say it was an 85. Now --

16 THE COURT: Who testified that it was an 85?

17 MR. WZOREK: Mr. John Lucille. He is the one who
18 gave me the rating.

19 THE COURT: Yes, he did testify. Okay.

20 Are you ready to go forward, Mr. Wzorek? Let's see,
21 where did we leave off?

22 MS. SMITH: We were about to finish with Mr. Barnes.

23 THE COURT: Ask him to take the stand.

24 Come on right up here, Mr. Barnes. You were
25 previously sworn. Do you understand you're still under

1 oath?

2 THE WITNESS: Yes, sir.

3 THE COURT: All right, thank you. You may continue
4 then.

5 MR. EX: Thank you, your Honor.

6 EUGENE BARNES,

7 called as a witness herein, duly sworn, was examined and
8 testified further as follows:

9 FURTHER DIRECT EXAMINATION

10 BY MR. EX:

11 Q. Mr. Barnes, during the last session where you
12 testified, I believe, Thursday of last week, isn't it true
13 that you stated that you relied on the accuracy of your
14 subordinates' reports of the probationary career service
15 employees' work performance?

16 A. Yes, sir.

17 Q. Mr. Barnes, is it also true that to the best of your
18 knowledge everyone was terminated pursuant to the criteria
19 that you had previously prescribed, that being either poor
20 work performance or excessive unauthorized absences?

21 A. Yes, that's correct.

22 Q. Mr. Barnes, do you know who Mr. Wzorek voted for in
23 the 1983 election?

24 A. No, I do not.

25 Q. Do you know who Mr. Wzorek ever voted for in any

1 election?

2 A. No, I do not.

3 Q. Mr. Barnes, I would like to show you what's has been
4 previously marked as Defendant's Exhibit No. 9.

5 For the record, Exhibit No. 9 is a Probationary
6 Career Service reporting form with the name Eugene Wzorek on
7 it.

8 Mr. Barnes, did you authorize the transmittal of
9 this particular document to the Department of Personnel?

10 A. Yes, I did.

11 Q. Is that your signature on the, towards the bottom of
12 that document?

13 A. Yes, it is.

14 Q. Mr. Barnes, I would also like to show you what has
15 been previously marked as Defendant's Exhibit No. 10.

16 For the record, Exhibit 10 is a June 29, 1984 letter
17 to Eugene Wzorek. Are you familiar with that letter, Mr.
18 Barnes?

19 A. Yes, I am.

20 Q. Did you authorize that letter to be sent to Mr.
21 Wzorek?

22 A. Yes.

23 Q. And is that your signature at the bottom of the
24 letter?

25 A. Yes, it is.

1 Q. Mr. Barnes, in your earlier testimony you mentioned
2 the importance of the Sewer Department employees wearing
3 various safety employment, is that correct?

4 A. That's correct.

5 Q. You stated that it was extremely important that they
6 always wear their helmets, is that correct?

7 A. That's correct.

8 Q. Are there any other pieces of safety equipment that
9 you're aware of that were very important or required of the
10 employees to wear?

11 A. Yes, there are several pieces of safety equipment plus
12 safety shoes, safety vests, it depends on the kind of
13 operation the employees were involved with, but they were
14 required to wear whatever safety equipment that was involved
15 with that job at all times.

16 Q. To your knowledge, were safety shoes required of
17 everybody who worked out in the field?

18 A. To the best of my knowledge, that's correct.

19 THE COURT: Do you know?

20 THE WITNESS: Do I know personally?

21 THE COURT: Yes.

22 THE WITNESS: No, I do not. I understand that that
23 was one of the items of safety that was required.

24 BY MR. EX:

25 Q. Mr. Barnes, I believe that you had earlier testified

1 to the fact that events occurring prior to the probationary
2 period in 1984 were permissible considerations in determining
3 whether or not to retain a probationary career service
4 employee, is that correct?

5 A. That was my understanding, yes.

6 Q. And that your policy never restricted those
7 considerations outside of the probationary period, is that
8 correct?

9 A. Not the directive that I gave to the supervisors.

10 Q. Mr. Barnes, were you ever aware of any employees in
11 the Sewer Department wearing campaign buttons on the job?

12 A. Not personally, no, I was not.

13 Q. Did you ever have any policy prohibiting employees
14 from wearing campaign buttons?

15 A. No.

16 Q. Mr. Barnes, are you familiar with the Democratic
17 organization of the 12th or 13th Wards?

18 A. Not familiar with it, no.

19 Q. Did you ever participate or support either of these
20 organizations?

21 A. Not to the best of my knowledge.

22 Q. Mr. Barnes, what ward did you live in while you were
23 Commissioner?

24 A. I reside in the 34th Ward and I have for most of my
25 adult life.

1 THE COURT: Did, do, and will, right?

2 THE WITNESS: Yes, sir.

3 BY MR. EX:

4 Q. Mr. Barnes, when you came into the position of
5 Commissioner of the Department of Sewers, was there any
6 problem with people working out of title, in other words,
7 performing tasks that weren't directly related to the job
8 title and the budget?

9 A. Absolutely. One of the problems that we had and one
10 of the things that I guess was resolved with the DS
11 probationer period.

12 In addition to that, though, I myself personally had
13 asked the Department of Personnel during that period of time
14 to audit all positions because of the high number of people
15 that we had that was working out of title.

16 Q. Mr. Barnes, would it be correct to state that when you
17 first became Acting Commissioner that it wouldn't have been
18 unusual then for a laborer to be acting out of title and
19 actually performing timekeeper functions?

20 A. They did all kinds of functions. Timekeeping, as far
21 as that goes, is a major thing, but that's minimal compared
22 to some of the things that they were doing out of title.

23 Q. So it wouldn't have been unusual that that would have
24 occurred?

25 A. Absolutely not.

1 MR. EX: That concludes my examination, your Honor.

2 MR. WZOREK: Mr. Barnes, I wasn't going to cross
3 examine you, but he opened up some things I'll have to get on
4 with.

5 CROSS EXAMINATION

6 BY MR. WZOREK:

7 Q. Mr. Barnes, you're stating that you gave orders to
8 your immediate supervisors and they let them into the field,
9 is that right, like the May 3rd or whatever it is?

10 A. Well, generally, that's correct. That's the standard
11 procedure.

12 Q. What if your field supervisors didn't put your orders
13 into effect?

14 A. Well, there is no way for me to know directly except I
15 would get feedback if something was not carried out or if
16 there was some problem. Usually you would get some kind of
17 feedback.

18 Q. No, no, I don't mean that. The question is if they
19 did not put your orders into in effect, then in other words,
20 your orders would not be in effect?

21 A. Well, that's correct.

22 Q. So then if I say that May 3rd was never used in the
23 Sewer Department and your district supervisors come up here
24 and say they never used it, there is no May 3rd in your
25 department, sir.

1 THE COURT: You mean May 3rd order?

2 MR. WZOREK: Right, no memorandum.

3 BY MR. WZOREK:

4 Q. Is that not correct?

5 A. Well, it's difficult for me to answer the question
6 simply because I don't know what the May 3rd order was, but

7 --

8 Q. Oh, you don't. Okay.

9 A. If the order was handed down and it was not carried
10 out, there is no way for me to know.

11 Q. Okay, the May 3rd order was that they changed the
12 probation and took away the evaluations.

13 A. I just don't have any knowledge of it.

14 Q. Well, in other words, if your supervisors come here
15 and say that they didn't use it, they used the first one,
16 that means the men were used according to the two rating
17 system in your department? Your department did not follow
18 the orders of --

19 A. I just have no knowledge of it, sir. I can't speak to
20 it.

21 Q. As far as politics, Mr. Ex said that there was no
22 politics in the department or anything.

23 Sir, did you ever read this article on why you were
24 fired and replaced as department boss?

25 A. I probably didn't.

1 Q. Would you like to look at it or glance at it or
2 whatever.

3 A. Sure.

4 MS. SMITH: Your Honor, I'm going to object to Mr.
5 Barnes' examination of that article. I think it's relatively
6 clear in this district that newspaper articles are hearsay.

7 THE COURT: It depends on how he intends to use it.
8 Mr. Barnes first wants to check and see if they spelled his
9 name right.

10 THE WITNESS: Right.

11 BY MR. BARNES:

12 Q. Could you tell us why you were fired then after
13 looking at it or resigned?

14 A. Well, number one, to clear up the situation I wasn't
15 fired.

16 Q. Okay. Why did you resign?

17 A. I resigned to take additional activities. No, I
18 didn't see in particular article, but as I believe I have
19 indicated, I left the City to go into private industry.

20 MR. WZOREK: Your Honor, if you're going to sustain
21 or take it out -- are you going to object to that or can I
22 place it in?

23 THE COURT: No, it is --

24 MR. WZOREK: Hearsay.

25 THE COURT: It is hearsay and there isn't a proper

1 foundation laid for it, and that is one of the problems
2 you're going to have trying to be your own attorney.

3 MR. WZOREK: Right, right.

4 THE COURT: But at the moment the evidence isn't what
5 we call competent.

6 MR. WZOREK: All right, your Honor, if I could show
7 Mr. Barnes this.

8 BY MR. WZOREK:

9 Q. You know who James Montgomery is, do you not, sir?

10 A. Yes, I do.

11 Q. Wasn't he your Corporation Counsel at the time?

12 A. Which time?

13 Q. In '83 and '84.

14 A. I believe so. The reason I asked that, I believe
15 during the period of time I was there there was three
16 corporation counsel.

17 Q. Did you ever see this newspaper article about never
18 admitting to a political firing?

19 A. I'll be honest with you, I probably did not.

20 MS. SMITH: Same objection, your Honor.

21 THE COURT: I don't know what it is.

22 MR. WZOREK: It's "Never Admit to a Political
23 Firing." It's a quote issued by Mr. Montgomery in Dallas,
24 Texas, and there is an affidavit--

25 THE COURT: What's Montgomery got to do with Barnes?

1 MR. WZOREK: Well, in other words, he said the
2 Department wasn't political and here it says that he tells
3 all the department workers never to admit to a political
4 firing, keep it under control, and there is an affidavit to
5 that effect.

6 THE COURT: An affidavit is different. Where was the
7 affidavit submitted and by whom?

8 MR. WZOREK: It was Quagliano v. Womack, Case 94 C
9 6033.

10 THE COURT: What does the affidavit say?

11 MR. WZOREK: It's an affidavit of -- here, it says:
12 "Upon receiving a copy of the patronage and political
13 dismissals that indicate it was by James Montgomery and
14 Katrina Bell, I instructed my secretary to prepare a new
15 cover sheet with my name on it. The cover sheet is stating
16 that you never admit to a political firing."

17 THE COURT: Signed by whom?

18 MR. WZOREK: It's signed by James Montgomery.

19 MS. SMITH: Your Honor, can we look at that
20 document? We have never seen that before.

21 THE COURT: Yes, I would like to see it too. You can
22 look at it first. Show it to them, please.

23 MR. WZOREK: I got another one here too, your Honor.
24 Should I give it to Mr. Barnes?

25 THE COURT: Show it to them too.

1 MR. WZOREK: It's the same one.

2 THE COURT: Oh. Well, let me see it then.

3 MR. WZOREK: Okay.

4 (Pause.)

5 THE COURT: Mr. Wzorek, this doesn't help you. This
6 is an affidavit by Mr. Montgomery saying that the article
7 that you're referring to isn't true, that he never gave it,
8 never intended to give it, and it wasn't ever used.

9 MR. WZOREK: But it says that he told them to sign
10 his name on there and it was put into -- according to this
11 thing it was put into the Dallas Council where they were
12 talking to people about the jobs and about political firing.
13 That would back up the newspaper article.

14 THE COURT: Yes, but he said he never read the
15 document.

16 MR. WZOREK: Well, I just figured since he put his
17 name on it.

18 THE COURT: Yes, but he says he never read it.

19 MR. WZOREK: Okay.

20 THE COURT: He didn't subscribe to it.

21 MR. WZOREK: All right.

22 THE COURT: That's not acceptable.

23 BY MR. WZOREK:

24 Q. Mr. Barnes, we were talking about safety equipment,
25 all right, and you said safety shoes were supposed to be

1 worn, right?

2 All right. What I see in the rules were that you
3 can have safety shoes, but they can be any kind of shoes as
4 long as they are steel-toed shoes. It says in one of the
5 rules in the thing.

6 So in other words, if a man had one leg shorter than
7 the other an inch and he had to wear a heel for balance or
8 something like that, that would be perfectly all right as
9 long as he had safety shoes, steel-toed, or boots, is that
10 correct?

11 A. Well, you're asking me for an opinion of what the
12 requirements were, and I didn't say anything about what kind
13 of shoes, I said that to the best of my knowledge, depending
14 on the job, you were required to wear certain safety
15 equipment.

16 Q. Yes, a steel-toed shoe is what I read in the rules.
17 It didn't say how high, how low.

18 A. You may be correct. I simply know that depending on
19 the job you have to wear certain shoes.

20 Q. So like a truckdriver if he had to wear steel-toed
21 shoes --

22 MR. EX: Your Honor, objection as to the foundation
23 as to the statements he is making about particular rules that
24 he is questioning the Commissioner about.

25 THE COURT: Well, he is asking questions and they are

1 not evidence, and so the objection is not appropriate to its
2 evidentiary value. It may be appropriate to its
3 argumentative implications, but you can deal with that with
4 Mr. Barnes in your redirect if you need to, and rest assured
5 that I have been wearing this black dress now for twelve
6 years and I am able to sort out the difference between a
7 lawyer's argumentative question and his testimony.

8 Continue, Mr. Wzorek.

9 BY MR. WZOREK:

10 Q. Mr. Barnes, you say that you signed the firing notice
11 that went up to Dr. Pounian?

12 A. That's correct. As the department head I sign all of
13 those.

14 Q. Were you not in Springfield on June 29, 1984, you were
15 not in the office?

16 A. That's correct.

17 Q. Well, then how could you sign it and send it up to the
18 office?

19 A. I believe I have said before in testimony -- I said
20 the same thing in deposition -- that these signatures are
21 authorized and they are stamped.

22 Q. So in other words, Mr. Sommerford, like you said
23 before, sent it up and stamped it?

24 A. No, I did not say who sent them up and stamped them.
25 I said the stamp, my signature, my stamped signature was

1 authorized to be stamped to these documents. I didn't say
2 who stamped them to the documents because I simply don't
3 know.

4 Q. You don't know who stamped them at all?

5 A. I don't know what physical person.

6 Q. So then in other words, it could have been Mr.
7 Sommerford because his name was on it too?

8 A. It could not have been. He is not authorized to use
9 may stamp.

10 THE COURT: Who is?

11 THE WITNESS: There were several people in the
12 department, several levels, Deputy Commissioner, one or two
13 --

14 THE COURT: Who was that?

15 THE WITNESS: Commission Beard, one or two Assistant
16 Commissioners, as I remember, the Personnel, timekeeping
17 people. There was not very many, but I would say maybe a
18 half a dozen.

19 BY MR. WZOREK:

20 Q. As I recall, Mr. Sommerford's name is on the firing
21 slip. Would that make any sense then? If he is not
22 authorized to do anything, why is he on the firing slip?

23 A. As I testified before, as I understand it, these were
24 forms that we were required to send to the Department of
25 Personnel, and in the forms it requires both a supervisor's

1 signature, which Mr. Sommerford signed as supervisor, and it
2 required my signature as the department head.

3 Q. But as you stated before under oath that Mr.
4 Sommerford fired me.

5 A. I did not state that.

6 Q. Yes, you did state that, sir.

7 MS. SMITH: Objection, it's argumentative.

8 THE COURT: Sustained, it's argumentative.

9 BY MR. WZOREK:

10 Q. So then in other words, Mr. Sommerford had nothing to
11 do or nothing, he just had his name on the stamp just like
12 that?

13 MR. EX: Objection.

14 THE COURT: Overruled.

15 BY THE WITNESS:

16 A. The only thing I can say is that my signature was
17 authorized by myself for these forms on at least one or two
18 of the forms that I have seen. It was required that the
19 supervisor of the particular section of the department was
20 required to sign them previous, as I understand it, to my
21 signature being affixed to it.

22 THE COURT: Just one correction, Mr. Barnes. Mr.
23 Wzorek is doing a fine job, but he is not counsel.

24 MR. WZOREK: Your Honor, I can't understand the
25 system to that then because what it says when --

1 THE COURT: Mr. Wzorek, you can't argue with me.

2 MR. WZOREK: Oh.

3 THE COURT: And you can't testify when you're asking
4 questions.

5 MR. WZOREK: Well, I'll try to do the best I could.

6 BY MR. WZOREK:

7 Q. When did you authorize them to put this name on?

8 A. Well, the authorization for using of my signature is
9 almost automatic. When you first go into any agency of that
10 size or any size that I have been head of, one of the first
11 things you do is sign signature stamps and certain people
12 within the organization -- as I say, I can't tell you
13 exactly, it has been sometime -- but there is about a half
14 dozen or more people who are authorized to use those stamps.

15 Q. Did you make your authorization before June 26th or
16 did you do it on the 28th or the 27th?

17 A. For these forms, are you asking about these forms?

18 Q. Yes, the forms for firing that went up.

19 A. For these forms I made the authorization for them to
20 be signed during that period of time. I can't tell you what
21 day, the date, because as you asked me before, I was in
22 Springfield doing business there, but I was in constant
23 contact with the office by phone during this whole period of
24 time.

25 But now for me to say what day I authorized this or

1 what moment, I can't say that now.

2 Q. So then in other words -- the last question -- so in
3 other words, when you authorized your name to be stamped, you
4 didn't know what anybody did? It was up to these guys to
5 send your letter in and do all that and do the firing for you
6 in a form of that they were making the charges?

7 A. That's incorrect. When -- during the whole period of
8 time when this was being worked on, I was in and out of
9 Chicago.

10 During the particular day that you asked me about as
11 it relates to these forms, I was not in Chicago, I was in
12 Springfield, but I was in constant contact with my office,
13 having conference calls, as a matter of fact, not just with
14 one person, about the process that was being carried out.

15 When the determination was read to me using the
16 criteria that I have indicated to you -- that's why I think
17 you see that so often -- using that criteria that these
18 people require my signature on forms to be sent to them, I
19 said yes, authorized to stamp my name to the specific form
20 that was necessary.

21 Q. What I was stating, though, in just a brief question
22 was that in other words, you didn't know what these people
23 did, these people had to relate to you what they did, they
24 were making the charges, is that not right?

25 MR. EX: Objection, mischaracterization of his

1 testimony as to that he didn't know what they were doing.

2 THE COURT: It's cross-examination. He can ask the
3 question.

4 BY THE WITNESS:

5 A. I knew what was being authorized and I authorized it.

6 BY MR. WZOREK:

7 Q. No, no, no, I meant you didn't know what every
8 employee was doing, you couldn't say they did this wrong or
9 that wrong or not. These guys were the ones making the
10 charges is what I meant.

11 A. Sir, I don't know what every employee would have done
12 now. I can only say, as I have testified before, that I
13 based my decision on the recommendation of my supervisory and
14 my executive staff people who was involved in this and who
15 had the responsibility, had the responsibility to make those
16 recommendations to me as the department head.

17 That would not have been any different if I had been
18 sitting in that office. The same process would have been
19 involved whether I was in that office or whether I was in
20 Springfield.

21 Q. You mean you could not have argued with someone and
22 said, "Well, this guy didn't do nothing wrong. Why are you
23 firing him or recommending this" if you were sitting in
24 person?

25 A. How could I know? When I didn't know one person from

1 the other on that list, my decisions was based on --

2 Q. What they said.

3 A. The recommendations that was made from my supervisors
4 and my executive staff based on the criteria I had asked --
5 directed them, not asked them, directed them to use.

6 Q. And like I stated before, just asking the last
7 question then, I stated before then if they didn't use the
8 directives you told them, they had used another one, then
9 they weren't following your orders.

10 A. I can't say they did or did not, I can only say what I
11 had directed them to do. If there was a mistake made, that's
12 possible, no one is perfect, but I can only say that based on
13 the criteria that I had set out and based on the information
14 that I received, I made these authorizations.

15 MR. WZOREK: Okay, your Honor.

16 MR. EX: Just a couple of questions, your Honor.

17 REDIRECT EXAMINATION

18 BY MR. EX:

19 Q. Mr. Barnes, isn't it a fact that you believed that all
20 the reports from your subordinates as to recommendations or
21 reports as to the performance, work performance of your
22 subordinates were true and correct and accurate?

23 A. That's correct.

24 Q. Directing your attention again to Defendant's Exhibit
25 No. 9, which is the probationary career reporting form, Mr.

1 Barnes, is that a form that was provided by the Department of
2 Personnel?

3 A. To the best of my knowledge, that's correct.

4 Q. And, Mr. Barnes, as Commissioner, was it your practice
5 to delegate many responsibilities of the department to
6 function day-to-day, or to perform day-to-day functions of
7 the running of that department?

8 A. Well, that's the only way you can run it. As I have
9 indicated before, the department is not in one place, it is
10 all over the city, so you have to set certain criteria, so
11 you then delegate that authority to the -- delegate the
12 carrying out of it, not the authority, the carrying out of it
13 to the supervisory personnel in the field.

14 Q. So, for example, you wouldn't go out in the field and
15 check to see if, for instance, a truck driver such as Mr.
16 Wzorek was was in fact reported to work that day, would you?

17 A. Oh, no, there's just no way you can do that.

18 Q. That would be a responsibility you would have
19 delegated to someone else?

20 A. That's the field supervision's responsibility.

21 MR. EX: I have no further questions.

22 THE COURT: You may step down, sir, and thank you
23 very much. It's good to see you.

24 THE WITNESS: Thank you very much, sir.

25 (Witness excused.)

1 THE COURT: Who is putting on evidence now? Let's
2 see.

3 MS. SMITH: Mr. Wzorek is still --

4 THE COURT: Mr. Wzorek.

5 MR. WZOREK: I call Mr. Raymond Wasilewski.

6 RAYMOND WASILEWSKI,
7 called as a witness herein, duly sworn, was examined and
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. WZOREK:

11 Q. Could I have your full name, sir.

12 A. Raymond Wasilewzki, W-a-s-i-l-e-w-s-k-i.

13 Q. Where do you work at?

14 A. Department of Sewers, 1st District, 21 South Peoria.

15 Q. Where do you live, sir?

16 A. Where I live?

17 Q. Yes.

18 A. 4141 North Monticello, Chicago.

19 Q. What capacity are you employed at the Department of
20 Sewers?

21 A. Engineer in charge, mechanic.

22 Q. Is that what you were in 1984 too, Ray?

23 A. Yes, sir.

24 Q. What were you being paid as, what list were you on?

25 A. Referring to '82?

1 Q. '84, Ray.

2 A. Engineer in charge, 21 -- 18 -- I can't remember, 18
3 something.

4 Q. So you were being paid as an engineer, right?

5 A. Yes, sir.

6 Q. Who was your boss at that time that you reported to?

7 A. There is two. I really don't know unless it was Gil,
8 Gil Schreiber or Tony Artolano.

9 Q. And they were head of the engineers, right?

10 A. Yes, sir.

11 Q. Did you know me, Ray?

12 A. Yes, sir.

13 Q. When did you meet me about?

14 A. Whenever you brought a truck to do repairs.

15 Q. Have you ever written me up?

16 A. No, sir.

17 Q. You have never written me up at all?

18 A. No, sir.

19 Q. There are no write-ups on me for doing any --

20 A. Not from me, no, sir.

21 Q. And as far as you know, you don't know of any other
22 write-ups from negligence or truck or anything?

23 A. No, sir.

24 Q. Okay, sir. Now, can I call you back to the year of
25 the probation, 1984. I'll try to be as precise as I could,

1 okay, Ray?

2 A. Yes.

3 THE COURT: Do you know what he means when he says
4 "the year of the probation"?

5 MR. WZOREK: Yes, 1984.

6 THE COURT: He is talking about the period of
7 probation.

8 THE WITNESS: Probation?

9 MR. WZOREK: Yes, sir.

10 THE COURT: That was set on the whole department,
11 that was set on everybody by the City Council.

12 THE WITNESS: I don't recall, your Honor.

13 THE COURT: You're going to have to make it clear.

14 BY MR. WZOREK:

15 Q. From January 21st to June 29th 1984 the whole city was
16 put on probation, Ray.

17 MS. SMITH: Judge, I'm going to object that the whole
18 city was put on probation. That's a mischaracterization.

19 THE COURT: City employees.

20 MR. WZOREK: The City employees were put on-- well,
21 the Sewer Department we'll talk about, Ray.

22 MS. SMITH: Again, your Honor, I'm going to object.
23 I believe only DES employees were put on probation.

24 THE COURT: DES.

25 THE WITNESS: Your Honor, I don't remember being on

1 probation.

2 BY MR. WZOREK:

3 Q. Well, if you were civil service then you wouldn't --
4 no, but I mean --

5 THE WITNESS: I don't remember, I'm sorry, your
6 Honor.

7 THE COURT: All right.

8 MR. WZOREK: That's the -- the DES or whatever she
9 said, that's the year that we were put on probation.

10 THE WITNESS: I wasn't, no, sir.

11 MR. WZOREK: I know you weren't.

12 THE COURT: You were civil service.

13 THE WITNESS: Yes, sir.

14 MR. WZOREK: Relax. It's hard for both of us, Ray.

15 THE WITNESS: All right.

16 BY MR. WZOREK:

17 Q. You remember the year of 1984. Do you remember a
18 little bit back there or is it kind of far back for your
19 memory?

20 A. Vaguely.

21 Q. Well, I'll try to refresh you on certain things and
22 then maybe we can go from there, okay?

23 A. Yes.

24 Q. Okay. In June -- it was June 18th, to be precise of
25 1984 -- you were given a call from the 5th District.

1 A. Yes, sir.

2 Q. By Mr. James Whelan.

3 A. Yes, sir.

4 Q. As to a truck being down?

5 A. Yes, sir.

6 MR. EX: Objection as to the foundation of the date.

7 THE COURT: Date?

8 MR. EX: The date that he was referring to.

9 THE COURT: If he can remember the date or anything
10 about the time.

11 BY MR. WZOREK:

12 Q. Can you remember anything about this situation?

13 A. I was called from the foreman of the -- at that time
14 it was the 5th District -- that a truck was broke down and
15 sent a mechanic out there, and he found a truck flooded,
16 started the truck up, he no more came back to the district, I
17 was called again by the same foreman, he was sent back out
18 there again, and found a broken starter. That wasn't
19 included the first time. The first time it was flooded.

20 He went back there the second time and found the
21 Bendix starter broke.

22 Q. So in other words --

23 A. And I towed it to the 1st District.

24 Q. In other words, did you know who the driver was out
25 there at the time?

1 A. No, sir.

2 Q. Could you have checked up on the sheets and found out
3 who he was?

4 A. No, sir, that's the foreman of the district.

5 Q. So in other words, you could never check up on these
6 sheets to find out --

7 A. No, sir.

8 Q. You would never know who the driver was to any truck
9 that broke down?

10 A. No, sir.

11 Q. Even now or five years ago?

12 A. No, sir.

13 Q. Ten years ago?

14 A. No, sir.

15 Q. Did you know how many drivers were out there at 75th
16 and Western?

17 A. No, sir, that's what I'm saying. I'm in the
18 district. I don't know.

19 Q. And you don't know how many trucks were out there or
20 anything?

21 A. No, sir. Like when you bring a truck in, that's the
22 only time I see you or anybody, when it's broke down.

23 Q. Another question I would like to ask you is do you
24 have the authority to write anybody up?

25 A. That's a question, no, because that's up to the

1 foreman of the district.

2 Q. So you can't write no one up?

3 A. There is a question there if I can or not. I am
4 engineer in charge. I can write.

5 Q. And then you never recommended me to be written up for
6 any kind of damage?

7 A. No.

8 Q. As far as you know I was a good employee, as far as
9 you know?

10 A. As far as what happened, that's all I know.

11 THE COURT: You know, you don't have to stick with
12 that microphone. It doesn't do you any good.

13 MR. WZOREK: What could I say? I would rather stay
14 right up here.

15 THE COURT: You can. That microphone doesn't give
16 volume, it's just for the tape recorder.

17 BY MR. WZOREK:

18 Q. I know it's been a long time ago, Ray, but the
19 depositions say a little bit different things, all right, and
20 I know it's been a long time ago.

21 It says in here that you said there were a lot of
22 drivers out on 75th and Western and a lot of trucks.

23 A. I don't recall.

24 Q. I understand it's been a long time. The main issue
25 I'm trying to get at is that I didn't do anything wrong to be

1 fired for, okay?

2 What if I was to tell you that at that year, 1984,
3 you came out when I came to pick up a truck, 215, I wasn't
4 allowed to have that truck because I was being punished for
5 breaking that truck down; would you agree with that or no?

6 A. I don't remember.

7 Q. Would you have any knowledge that it was the same
8 driver that downed both of these trucks?

9 A. No, I wouldn't have the same knowledge, no, because I
10 only repair the truck. Whoever comes in and picks up the
11 truck is the driver. If he is sent there to pick up that
12 truck, he picks up that truck.

13 Q. So in other words, like if it was Mr. Beanos that
14 broke down this truck and you didn't write him up and nobody
15 wrote him up for that or charged him, you couldn't say, "Hey,
16 I should have did it. We ought to fire him now." That would
17 be like complete irrelevance, am I not right?

18 A. Right.

19 Q. Wrong. This is a little hard because it threw my
20 whole questioning off because I thought you would know what
21 you said.

22 Do you remember me ever coming to the district and
23 telling you that I was fired, two weeks or three weeks after
24 the firing?

25 A. Yes, I remember that, two or three weeks after you

1 were fired.

2 Q. Ray, I'll have to disagree because I was in Indiana.

3 A. No, we were talking. You talked to me. It may or may
4 not have been two or three weeks then, sir, but you did come
5 in the garage at one time.

6 Q. Okay. Now, did I possibly come into the garage two
7 days after the truck incident and then talk to you?

8 A. I don't remember, but I know you came in the garage
9 and talked to me.

10 Q. Do you know what we talked about?

11 A. No, sir. You just told me that you were fired.

12 Q. This is impossible, Ray, because --

13 A. I talked to you, sir.

14 MR. EX: Objection, arguing with the witness.

15 BY MR. WZOREK:

16 Q. No, what I'm trying to lay the foundation for I wasn't
17 fired yet when I talked to you.

18 A. You mentioned it.

19 Q. Ray --

20 THE COURT: Do you have something on there? He is
21 not sure what you're looking for, Mr. Wzorek, and you're not
22 making it clear to him. You're asking him to punch in the
23 dark.

24 If you got something there, ask him.

25 MR. WZOREK: Okay.

1 BY MR. WZOREK:

2 Q. You said I came into the ward yard and told you I was
3 fired, into the district.

4 A. Yes, sir.

5 Q. And then I left.

6 A. Yes, sir.

7 Q. What I'm trying to state --

8 THE COURT: Use it.

9 BY MR. WZOREK:

10 Q. In another statement you said, "I understand you did
11 not speak to anybody that day." You said here that you did
12 not talk to me?

13 THE COURT: Where, what day did he take that? Was
14 that on his deposition?

15 MR. WZOREK: Yes. You know, his deposition is so
16 messed up, you would have to put it in evidence, your Honor.
17 It's like -- pardon me, your Honor, it's like --

18 THE COURT: Who took it?

19 MR. WZOREK: Harry Schroeder took the deposition, but
20 the difference in this deposition --

21 THE COURT: Read the question and read the answer and
22 ask him if he gave it.

23 MR. EX: Excuse me, Mr. Wzorek, would you identify
24 the page you're reading.

25 MR. WZOREK: Okay. I'm reading page 19 right now.

1 Could I just explain one thing to your Honor? The
2 only reason I'm having such a hard time and I didn't have it
3 before is because there is like A, B, C, and D answers to
4 questions. There is not no yes or no.

5 THE COURT: That's all right. The gentleman is
6 trying to remember.

7 MR. WZOREK: I know, I know.

8 THE COURT: But you're asking him questions that ask
9 him to go back four years and remember out of nowhere.

10 MR. WZOREK: I know.

11 THE COURT: Give him some clue where you're headed.

12 MR. WZOREK: All right, here it is. Now, let's go to
13 this part now.

14 BY MR. WZOREK:

15 Q. On page 20, Harry Schroeder asked you a question:
16 "Why is it that you connect this particular truck breakdown
17 with Mr. Wzorek?"

18 And you say: "I don't know."

19 And then the question is: "Mr. Wasilewski, I direct
20 you to June 1984."

21 MR. EX: Excuse me, I believe his answer was: "I
22 don't know. What does that mean?"

23 MR. WZOREK: "I don't remember," I think, isn't it?

24 THE WITNESS: I don't remember.

25 MR. EX: The question that you just were reading out

1 of the deposition.

2 THE COURT: Let me get this. You're getting in an
3 awful mess, all of you are.

4 Sir --

5 THE WITNESS: Yes, sir.

6 THE COURT: Do you remember any of this?

7 THE WITNESS: Vaguely, no, sir.

8 THE COURT: Do you remember connecting him up with
9 the particular truck damage?

10 THE WITNESS: No, sir.

11 THE COURT: Okay. What more do you need, Mr.
12 Wzorek?

13 MR. WZOREK: I was just going by the statement that I
14 didn't talk to him -- how am I going to prove --

15 THE COURT: What difference does that make? The
16 gentleman says he doesn't remember connecting you up with any
17 particular truck incident, and that's his recollection.

18 BY MR. WZOREK:

19 Q. Then in other words, Ray -- okay. I'll just say that
20 you never wrote me up or anything or referred to anything
21 that I did wrong.

22 THE COURT: He already said that.

23 BY THE WITNESS:

24 A. No, sir.

25 MR. WZOREK: Okay.

1 THE COURT: Do you want to ask anything?

2 MR. EX: Yes, your Honor, we were also going to use
3 him as one of the witnesses in our case, so if we could --

4 THE COURT: You may.

5 MR. EX: -- to expedite things.

6 THE COURT: Go ahead.

7 CROSS EXAMINATION

8 BY MR. EX:

9 Q. Ray, I know that this happened in 1984, which was a
10 time ago, but we would like to be able to get things a little
11 straighter in your mind as to what happened when and what did
12 you do.

13 Ray, can you tell us, how long have you worked for
14 the City of Chicago?

15 A. Going on almost 30 years, 29, 30 years.

16 Q. And you describe yourself as being the engineer in
17 charge, is that correct?

18 A. Yes, sir.

19 Q. So does the responsibilities of that position involve
20 being a mechanic?

21 A. Master mechanic, yes.

22 Q. So you would repair trucks and Sewer Department
23 equipment, is that right?

24 A. Yes, any high-lifts and cranes, whatever broke down.

25 Q. So you have had experience in your 30 years in

1 repairing engines and brakes and transmissions and all the
2 other parts of automobiles and trucks?

3 A. Yes.

4 Q. And where is your mechanics garage located?

5 A. 21 South Peoria.

6 Q. So that's the 1st District?

7 A. Yes, sir.

8 Q. And have you had any experience driving trucks
9 yourself, sir?

10 A. Years ago, yes, sir, like where we test them out. If
11 a mechanic is through with a truck and he is busy, then I
12 take it out and test it before it's given back.

13 Q. Were you ever a truckdriver yourself?

14 A. Yes, sir, years ago when I was younger.

15 Q. You were making some reference in response to Mr.
16 Wzorek's questions about a truck that flooded out.

17 Do you remember if that truck or that incident that
18 I believe you referred to as the truck flooding out and then
19 you had to call, you got a second call and had to tow it in.

20 A. Yes, sir.

21 Q. To your knowledge, did that happen on June 18, 1984?

22 A. No. All I remember faintly is the call that the truck
23 was down and send a mechanic back out again, found what was
24 broken and I called the tow truck, had it brought into the
25 1st District and repaired it there.

1 Q. So you can't recall one way or the other what the date
2 was?

3 A. No, sir.

4 Q. Now, you had stated something about how you had sent
5 somebody out there first. That was a mechanic that worked
6 for you?

7 A. Yes, sir. John Wiatr.

8 Q. So in response to that foreman's call, you sent Mr.
9 Wiatr out there?

10 A. Yes, sir.

11 THE COURT: He just said that. Let's get moving,
12 counsel.

13 BY MR. EX:

14 Q. Did he tell you what the problem was or what he did,
15 Mr. Wiatr, when he went out there?

16 A. Yes.

17 Q. What did he do?

18 A. He found a truck flooded, too much gas. He dried it
19 out, came back into the garage, got a call, another call from
20 the foreman of the district the truck was down again, send a
21 mechanic out, it was still the same place he fixed it,
22 checked it out and found a broken starter drive and had it
23 towed back into the 1st District.

24 Q. When Mr. Wiatr went out there the first time, do you
25 know, did he replace that starter?

1 A. It wasn't a starter, it was flooded out. The second
2 time the starter was replaced.

3 Q. And it was after that second time you received yet
4 another call?

5 A. The second time. Two calls I had on that truck that
6 day.

7 Q. And after the second call --

8 A. It was a broken starter.

9 Q. And it was towed back in?

10 A. Yes.

11 Q. Do you ever remember threatening Mr. Wzorek?

12 A. No, sir, I don't threaten anybody. We kid around in
13 the garage like men generally do, you know, just talk, you
14 know, it's freedom of speech, that's all, but not harassing
15 or anything, no, sir.

16 Q. So you never recall threatening to punish him in any
17 way for anything he did?

18 A. No, sir.

19 Q. What's the responsibility of a truckdriver when his
20 vehicle is down and it's brought in to be repaired? Is he
21 supposed to --

22 A. Call his foreman or if he is on the street, call his
23 foreman, notify him the truck is down, and then if he has a
24 radio that's working he calls me or the foreman calls me, but
25 generally the driver calls from the job at the time of

1 breakdown after he calls his office.

2 Q. Is it a normal procedure for a truckdriver to have to
3 wait at the 1st District until his truck is repaired?

4 A. At that time, yes, sir, unless there was another
5 vehicle available or the foreman wanted him at the district.

6 Q. Was it your practice then to return the vehicle to the
7 driver after it was repaired?

8 A. Yes, sir.

9 Q. You were referring earlier to the starter incident and
10 that it was eventually towed back to the 1st District.

11 A. Yes.

12 Q. Did you ever have a chance to look at the truck?

13 A. Yes, sir, I examined the part when it was taken off by
14 another mechanic and found a spring broken.

15 Q. Do you have any idea of how that problem was caused
16 after inspecting it?

17 A. Yes, it looks like a case of holding a key when the
18 engine is still running.

19 MR. WZOREK: Your Honor, objection. Wouldn't that be
20 hearsay?

21 THE COURT: No, not if he has been fixing trucks for
22 thirty years.

23 MR. WZOREK: Okay.

24 BY MR. EX:

25 Q. Did Mr. Waitr, the gentleman who went out to fix the

1 truck for you --

2 A. Yes.

3 Q. -- did he ever tell you that Mr. Wzorek wasn't
4 responsible for breaking that truck?

5 A. No, sir.

6 Q. Did he ever tell you that Mr. Wzorek wasn't working on
7 the day that the truck was broken?

8 A. No, sir. I don't remember if it was.

9 Q. Do you remember seeing Mr. Wzorek come into the 1st
10 District when the truck was towed?

11 A. I don't remember.

12 Q. Mr. Wasilewski, were there any other incidents of
13 breakdowns that you can recall involving Mr. Wzorek?

14 A. Yes.

15 Q. Do you ever remember him driving a truck that's called
16 a Vactor truck?

17 A. Yes.

18 MR. WZOREK: Objection, your Honor, that's irrelevant
19 to the case. He says that I didn't do anything wrong or
20 anything like that.

21 THE WITNESS: This is other vehicles now. You're
22 referring to one vehicle. Your Honor, they're referring to
23 one vehicle, but there was two vehicles in reference to that.

24 MR. WZOREK: They're changing to another vehicle that
25 wasn't even present in the charges or anything.

1 THE WITNESS: But it's not down on paper, sir.

2 MR. WZOREK: See, your Honor --

3 THE COURT: Sustained.

4 MR. EX: Your Honor, the line of questioning I'm
5 asking him now is relating to other incidents that the
6 plaintiff was involved in.

7 MR. WZOREK: Objection, your Honor.

8 THE COURT: They weren't put anyplace as a basis for
9 his firing. No place are they written, no place are they
10 given over in discovery, no place are they made a part of
11 this record either during his employment, as far as you can
12 show me, or during the preparation of this case for trial.

13 MR. EX: Well, your Honor, I don't --

14 THE COURT: So they're not relevant to the reasons
15 for which he was fired. They never were stated as the
16 reasons for which he was fired and so why should you bring
17 them up now?

18 MR. EX: Well, your Honor, number one, I believe that
19 in discovery there was never any written or oral questions
20 during the depositions that were ever propounded by Mr.
21 Wzorek or his attorneys that would have allowed them to -- or
22 that would have gotten to the evidence that we are now trying
23 to establish.

24 The City has never made any attempt to hide any of
25 this information throughout discovery. Why we should now,

1 you know, Mr. Wzorek is claiming that these things were never
2 made known. We can't be held accountable --

3 MR. WZOREK: Your Honor --

4 MR. EX: -- for the lack of discovery processes that
5 his earlier attorneys did or did not do. Now, I believe
6 what the the City trying to show is Mr. Wzorek in this
7 lawsuit, it seems to be, is that he is trying to put into
8 issue what kind of worker he was. Well, we are merely
9 trying to come back and show some of the incidents that he
10 was involved in during the course of his employment.

11 THE COURT: How far before the time he was fired?

12 MR. EX: We are going back at most about two years.
13 I believe it is the same --

14 MR. WZOREK: Objection, your Honor.

15 MR. EX: -- which is the same period of time --

16 MR. WZOREK: Objection.

17 MR. EX: -- that the other earlier recorded
18 reprimands and written discipline were also made available to
19 Mr. Wzorek through discovery.

20 THE COURT: Who was acting on them? Is there some
21 information that somebody knew about them? You put all the
22 bosses on, they didn't know about them.

23 MR. WZOREK: That's right.

24 THE COURT: You put all the decisionmakers on the
25 stand and they didn't know anything about these things that

1 you're raising now.

2 MR. WZOREK: Well, your Honor --

3 THE COURT: Be quiet.

4 MR. WZOREK: Okay.

5 MR. EX: When we get to our portion of the case, your
6 Honor --

7 THE COURT: Which I hope is very soon. You're
8 running out of the time. You were supposed to have another
9 half day.

10 MR. EX: Which we have-- I don't believe that each of
11 our witnesses will take that long, your Honor --

12 THE COURT: Good.

13 MR. EX: -- but I believe that what some of them will
14 show are people that worked with Mr. Wzorek and in fact two
15 particular supervisors or foremen that had knowledge of Mr.
16 Wzorek's work.

17 THE COURT: The people that fired him said they had
18 no knowledge of these things. Now we are trying to figure
19 out out why he was fired, right?

20 MR. EX: Well, your Honor, he has put into issue --

21 THE COURT: The people that fired him, you had them
22 on the stand here. They said they didn't know anything about
23 these things, didn't they?

24 MR. EX: That's right. Mr. Barnes --

25 THE COURT: Okay, then they're not relevant.

1 MR. WZOREK: Your Honor, could I say something,
2 please, sir? The man stated that he never wrote me up, I
3 never did nothing to his knowledge, he is the head of the
4 trucks, how are you going to put on witnesses -- your Honor,
5 they gave me witnesses the day before pretrial, like when I
6 told you when we were in chambers.

7 These people are not mechanics, they cannot testify
8 to anything that has been done mechanically to a truck. That
9 man is the mechanic. That man stated I didn't do anything
10 wrong. Why are you bringing up new charges? Don't you have
11 enough?

12 THE COURT: You can go forward only for the purpose
13 of impeachment.

14 MR. EX: Well, your Honor, first of all, I would just
15 like to respond. I don't believe that it was Mr.
16 Wasilewski's testimony that he never witnessed or had any
17 knowledge of the petitioner being an ideal employee or never
18 having had any problems. I believe that was the words that
19 Mr. Wzorek was putting in his mouth.

20 THE COURT: Counsel, you are arguing improperly and
21 you know it.

22 MR. EX: I'm sorry, your Honor.

23 THE COURT: This witness did say that he never wrote
24 him up and didn't know any reason why he should be written
25 up.

1 Now, you go ahead with your attempted impeachment of
2 your witness if you want.

3 MR. EX: Well, I'm not looking to impeach my witness,
4 your Honor. I would --

5 THE COURT: Go ahead, counsel, don't argue with me.
6 Just go ahead.

7 MR. EX: I have no questions on impeachment. I would
8 only request if I could make an offer of proof as to the
9 testimony that I was trying to --

10 THE COURT: Go ahead with your questions, counsel.

11 MR. EX: Okay. Thank you.

12 BY MR. EX:

13 Q. Mr. Wasilewski, are you familiar with a Vactor truck
14 -- is that the --

15 MR. WZOREK: Objection, your Honor, that's
16 irrelevant. That's not even brought into this case.

17 THE COURT: I don't know. We will see.

18 BY THE WITNESS:

19 A. Yes, sir.

20 THE COURT: What kind of truck?

21 THE WITNESS: SV-17 Vactor pump truck, a big pump
22 truck.

23 BY MR. EX:

24 Q. What does a Vactor do?

25 A. It cleans up the residue in the sewers and gets the

1 water down.

2 THE COURT: All the truck drivers use them?

3 THE WITNESS: Yes, sir.

4 THE COURT: Go ahead.

5 THE WITNESS: They're supposed to have a D license,
6 though.

7 BY MR. EX:

8 Q. Mr. Wasilewski, do you ever remember a particular
9 incident involving Mr. Wzorek driving a Vactor?

10 A. Yes. I was called from the Commissioner, Mr. Quigley,
11 to go to Schuster's Equipment, or the truck SV-17 was towed
12 here from a job.

13 I went to look at it and found the clutch exploded
14 and the transmission case cracked and three pieces of metal
15 in the floorboard from a blown clutch like if somebody took
16 their clutch and let it slip off. The truck would not move
17 if you just pop a truck, called popping the clutch.

18 Q. Could you describe exactly what you mean by "popping
19 the clutch"?

20 A. Letting your foot off too quick on the clutch or your
21 foot slipping.

22 Q. Do you remember how old that SV-17 was at the time?

23 A. A new one, only about, not even a year old.

24 Q. Was that truck still under warranty, to your
25 knowledge?

1 A. It was at the time, yes, sir.

2 Q. You stated that you were called by Schuster's?

3 A. Yes, sir.

4 Q. What is Schuster's, could you explain that, please?

5 A. To explain the problem, the damage to the machine, and
6 they told me that the machine was not under warranty because
7 it was -- I forget the exact word, when you miss -- what's
8 the word for it, like when you break something purposely.

9 MR. WZOREK: Objection, your Honor, to how --

10 THE WITNESS: I don't know the word for it.

11 THE COURT: Objection sustained. It's all hearsay.

12 It will be stricken.

13 THE WITNESS: Then I had to wait and I had to call
14 in the foreman of the -- the foreman of the Vactor was Mr.
15 Krupa and he had to come there too to recall what I seen and
16 what Schuster's said to verify what was said.

17 BY MR. EX:

18 Q. Now, Schuster's, that's a place that the City uses to
19 help repair equipment?

20 A. Yes, sir.

21 Q. And when you were at Schuster's you had an opportunity
22 to inspect the Vactor yourself?

23 A. Yes, damage to the clutch and the transmission.

24 Q. What was your opinion as to how that was caused?

25 MR. WZOREK: Objection, your Honor, opinion.

1 THE COURT: Sustained, no foundation.

2 BY MR. EX:

3 Q. All right. Mr. Wasilewski, you had a chance to look
4 at the truck once it was at Schuster's?

5 A. Yes, sir.

6 Q. What did you do when you were there in terms of
7 looking at the truck?

8 A. Examined it to see if there was any fault to the parts
9 or anything like that and if they're wasn't --

10 Q. How did you examine it, what sort of things did you
11 do?

12 A. Looked at the parts, put them out on the bench, laid
13 them out on the floor, took pictures of it. They called in
14 Ford, they had to come in for the warranty and they said they
15 couldn't warranty it because it wasn't -- I'll come back to
16 the word I'm trying to say now.

17 They wouldn't recommend a warranty that was
18 purposely, like purposely broke, it wasn't due to the fault
19 of the parts.

20 Q. After you had that chance to examine the parts, the
21 parts being the clutch --

22 A. Yes, sir.

23 Q. -- I take it, did you then come to an opinion as to
24 what was the cause?

25 A. Yes.

1 Q. What was that opinion?

2 MR. WZOREK: Objection, it's an opinion, your Honor.

3 BY THE WITNESS:

4 A. You let the clutch off too fast or your foot slipped
5 off the clutch.

6 THE COURT: Objection overruled.

7 THE WITNESS: You have to ease out a clutch to start
8 a big truck like that, you can't just let it out or something
9 is going to blow up. You rev up the RPM at the same time
10 you leave the clutch out.

11 THE COURT: Did you say you finished?

12 MR. EX: I did not say that, your Honor.

13 THE WITNESS: That's what blew the clutch. It was
14 let out too fast.

15 BY MR. EX:

16 Q. Did you ever come to discover who was driving the
17 truck before that happened?

18 A. No, sir, Mr. Krupa did.

19 Q. Did Mr. Krupa tell you?

20 A. No.

21 Q. He never told you who had driven the truck?

22 A. No, sir. I just went down and examined the truck.

23 Q. In a truck like this Vactor, how should it be properly
24 engaged, the clutch?

25 THE COURT: Counsel, this isn't going to be

1 relevant. Your witness doesn't even know who was driving
2 the truck. The objection is sustained.

3 MR. EX: The question was going as to not recall any
4 particular driver, but how in general should the clutch be
5 operated.

6 THE COURT: Have you got somebody to connect up this
7 plaintiff with this truck?

8 MR. EX: Yes, in our case.

9 THE COURT: Who?

10 MR. EX: Two individuals.

11 THE COURT: You had one other witness, you said.

12 MR. EX: No, your Honor, we have about four witnesses
13 in our case.

14 THE COURT: You told me you had two just about ten
15 minutes ago.

16 MR. EX: Two that would relate just to this incident.

17 THE COURT: You better get going.

18 MR. EX: I will do my best.

19 THE COURT: You haven't got any foundation for these
20 questions on this truck.

21 BY MR. EX:

22 Q. In general how should a clutch like that in a Vactor
23 be operated?

24 THE COURT: Is this guy Krupa going to testify?

25 MR. EX: Right, Mr. Krupa will be testifying.

1 BY THE WITNESS:

2 A. Well, you should start the engine up, press your foot
3 down on the clutch, start the RPM on your engine and let it
4 out easy at the same time you give it gas to start the wheel
5 going.

6 THE COURT: Is it any different from any other truck
7 or any other clutch?

8 THE WITNESS: No, sir.

9 THE COURT: Then what are you asking these questions
10 for?

11 THE WITNESS: That's how the clutch is operated.

12 BY MR. EX:

13 Q. Mr. Wasilewski, other than what you have already just
14 testified to, do you remember any other incidents involving
15 the petitioner and any truck breakdowns?

16 MR. WZOREK: Objection.

17 THE COURT: It presumes a fact not in evidence.
18 There is no connection that this petitioner had anything to
19 do with that accident, none.

20 MR. EX: I'm sorry, your Honor.

21 THE COURT: And there is no indication that it's an
22 accident. So he used a clutch wrong once. Have you ever
23 used a gear shift car?

24 MR. EX: Yes, your Honor, I have.

25 THE COURT: Well, go ahead.

1 BY MR. EX:

2 Q. Mr. Wasilewski, do you ever recall an incident
3 involving a, what you referred to as an orange peel truck
4 that was driven by Mr. Wzorek?

5 A. Yes, sir.

6 Q. What was that incident?

7 THE COURT: Let's save some time. Do you know he
8 was driving the truck?

9 THE WITNESS: Yes, sir, the orange peel, yes, sir.

10 BY MR. EX:

11 Q. What did that particular incident involve?

12 A. Broken ring and pinion gear in the rear end.

13 Q. Where did that happen?

14 A. It happened out on the job. He drove it back to the
15 yard and brought it to my attention.

16 Q. Mr. Wzorek brought the truck directly to you?

17 A. Yes, sir.

18 Q. And did you have a chance to look at the truck?

19 A. Yes, sir.

20 Q. What did you discover?

21 A. Took the inspection cover off and found nine teeth out
22 of the ring gear.

23 Q. And the broken teeth in the ring gear, what effect
24 does that have on the truck?

25 A. Well, it makes a knock in there after you ride it for

1 awhile and bring it in. You can't get no power out of the
2 truck.

3 MR. WZOREK: Objection, your Honor. The question,
4 it wasn't even brought up. He says he didn't remember me
5 doing anything. When I asked the questions he didn't know
6 nothing.

7 THE COURT: You can get to cross examine him if you
8 want.

9 MR. WZOREK: All right.

10 BY MR. EX:

11 Q. Mr. Wasilewski, how old was that orange peel truck?

12 A. Two years old.

13 Q. After inspecting the truck, did you have an opinion as
14 to how the teeth on the gear were damaged

15 A. Yes, by a foot slipping off the clutch, letting the
16 clutch out too fast, same problem.

17 Q. So in your opinion it wasn't just due to normal wear
18 and tear?

19 A. No, sir. We haven't had a ring or pinion gear break
20 in them trucks as far as I have been down there that I know
21 of, or as long as I have been repairing them. This is a big
22 gear. It's a foot in diameter. The only way you can
23 possibly break it is jerk it.

24 Q. And after you inspected the truck and discovered what
25 was wrong with it, did you fix it yourself?

1 A. No, sir, I had it towed in to Schuster.

2 Q. Did you talk to anybody at Schuster about the truck?

3 A. No, sir.

4 MR. EX: I have no further questions, your Honor.

5 THE COURT: Do you want to ask any questions?

6 MR. WZOREK: Yes, sir.

7 Sir, I would like to ask first by them not writing
8 me up and it being three or four years beyond, is that
9 irrelevant then?

10 THE COURT: What?

11 MR. WZOREK: Your Honor, if that's going to be put
12 into evidence, because he said I didn't do nothing, nothing
13 to be fired for, so if that's going to be put into evidence,
14 I would like to know because then I could ask questions of
15 the man, because there are a few misstatements here that are
16 unbelievable.

17 THE COURT: Go ahead.

18 REDIRECT EXAMINATION

19 BY MR. WZOREK:

20 Q. Ray, you said the orange peel was two years old, did
21 you not?

22 A. Yes, sir.

23 Q. Over here you said, "Do you remember the age of the
24 truck" --

25 THE COURT: What day, what page?

1 MR. WZOREK: Page 55.

2 THE COURT: Go ahead.

3 MR. WZOREK: Okay.

4 BY MR. WZOREK:

5 Q. "Do you remember the age of the truck?"

6 You said, "Around a 1975."

7 A. No, it was made in 1979.

8 Q. But it says right here you said 19 --

9 A. When I looked up the list it was made in 1979.

10 Q. Could you answer me one other question. When I
11 referred to 1984, Ray, you didn't remember nothing. Then you
12 referred back two and three years past that you remember like
13 a --

14 A. No, you said out at 75th Street. I didn't know
15 anything out at 75th Street. Now, this is when it happened
16 and you brought the truck in the yard to me.

17 Q. Ray --

18 A. Did you bring the truck in the yard to me?

19 Q. No, I didn't.

20 A. Yes, you did.

21 MR. EX: Objection, your Honor.

22 THE WITNESS: You were the driver of the truck.

23 MR. WZOREK: Yes, I was the driver of the truck, but,
24 Ray, it was towed in.

25 THE WITNESS: No, you drove it in.

1 MR. EX: Objection, argumentative. No question is
2 pending.

3 MR. WZOREK: Here is another one, your Honor.

4 THE COURT: Go ahead, read it. It's interesting, he
5 did say the truck was towed in. He said it wouldn't work at
6 all. Now he is saying he drove it in.

7 Read the question.

8 MR. WZOREK: Here is the one about this.

9 When Mr. Schroeder is questioning Mr. Wasilewski on
10 page 20, he says he don't remember about me being absent at
11 all.

12 THE WITNESS: I agree.

13 MR. WZOREK: He says, "Do you remember the incident
14 well enough to bring it up? Why did you bring it up?" He
15 goes, "Oh, wait, I know why. It was due to the fact that he
16 wasn't working that day." You stated right in here.

17 THE COURT: Page?

18 MR. WZOREK: Page 20.

19 THE COURT: All right.

20 THE WITNESS: That was found out later, if I
21 remember right. Right. You're right there. I changed
22 it. I did.

23 BY MR. WZOREK:

24 Q. SV-17, let me ask you about SV-17, Ray. Who paid for
25 the damage to SV-17, Ray, and do you have any repair bills?

1 A. Ford and the City, yes, sir.

2 Q. In other words, Ford --

3 A. And the City.

4 Q. Didn't John Pasdale go down there with a defective
5 part and show them that the clutch couldn't have done that
6 unless it was defective?

7 A. I wasn't in on that, sir. I was just seeing the
8 truck, sir. I just told you I just seen the truck. I don't
9 know who was driving it or anything. I said that.

10 Q. Sir, you're testifying here that it was negligence,
11 that it was my negligence, and you're testifying now --

12 A. I didn't say it was your negligence, I says the truck
13 was negligent to break a clutch like that. How would I call
14 you negligent -- your Honor --

15 Q. Well, who are we talking about, Ray?

16 THE WITNESS: Your Honor, how would I call him
17 negligent if I didn't know he was driving the truck?

18 THE COURT: Well, did Ford pay the warranty?

19 THE WITNESS: Pardon?

20 THE COURT: Did Ford honor the warranty?

21 THE WITNESS: Half and the City, yes, sir.

22 THE COURT: Okay.

23 BY MR. WZOREK:

24 Q. If I could relate to this too now, Ray, the Vactors
25 were a year old, were they not?

1 A. Vactor?

2 Q. Yes.

3 A. About a year old, yes, sir.

4 Q. Now, remember I'm bringing --

5 A. I would say on average.

6 Q. Where were those trucks kept for six months, Ray,
7 without being used until the warranty ran out?

8 A. Warranty don't start until we use the trucks, that's
9 what I was told. I mean, I don't know. That's what I was
10 told.

11 Q. Where were these trucks kept and why weren't they used
12 for six months?

13 A. 1st District.

14 Q. They were parked at the 6th District.

15 A. Right, in the 6th District in the garage.

16 THE COURT: Why were they parked in the garage?

17 THE WITNESS: They were new. They weren't using them
18 yet, sir.

19 THE COURT: Why not?

20 THE WITNESS: I don't know. That was up to the
21 Commissioner. He okayed to use them.

22 THE COURT: What year was that?

23 THE WITNESS: I don't remember, sir.

24 THE COURT: Before '84?

25 THE WITNESS: Yes, I believe so.

1 THE COURT: Quigley?

2 THE WITNESS: Yes, I would say so, yes, sir,
3 Quigley.

4 BY MR. WZOREK:

5 Q. Wasn't it around '80, '81?

6 A. In that in that area, yes, sir, I would say.

7 MR. WZOREK: That's why, your Honor, I was wondering
8 if this has any relevance to the case. They haven't brought
9 this up --

10 THE COURT: Don't argue, just ask your questions.

11 MR. WZOREK: All right.

12 BY MR. WZOREK:

13 Q. So then Ray, so far as -- you don't even know I was
14 off that day, you said I was off, I wasn't off. A truck that
15 the pinion and ring breaks on, there would be no possible way
16 for me unless I was Superman to drive that truck in the yard
17 without an axle and without a clutch.

18 A. Well, I was kidding you that day, if you remember
19 right I looked at your shoes, you had patent leather shoes
20 and Cuban heels on there.

21 Q. Right.

22 A. I said you might have slipped off the clutch, if you
23 remember right. I was talking to you personally.

24 Q. Ray, you just stated to the Court --

25 A. I mean, I was talking to you personally.

1 Q. Which day was that, Ray?

2 A. The day you came in the garage with the orange peel
3 when it broke down.

4 Q. Okay. Then with the Vactor you never were --

5 A. No, sir, nothing to do with the Vactor.

6 Q. Nothing to do with the Vactor?

7 A. No, sir, no, sir.

8 THE COURT: Your memory has improved a lot.

9 THE WITNESS: On the orange peel, yes, sir.

10 BY MR. WZOREK:

11 Q. Now, on the orange peel, Ray, it states in there that
12 you can wear safety shoes, it don't matter what kind, safety
13 shoes, not leather boots --

14 THE COURT: Don't argue with him.

15 MR. WZOREK: I'm just --

16 THE COURT: Now, stop. That's not even part of this
17 witness' testimony.

18 MR. WZOREK: Well, they're going to jump on me, you
19 know.

20 THE COURT: No, they're not.

21 THE WITNESS: With a three hundred pound clutch it's
22 pretty hard to press down with dress shoes when you work all
23 day.

24 MR. WZOREK: It's your foot that's pressing, not the
25 shoe, Ray.

1 THE WITNESS: That's your opinion, not mine.

2 THE COURT: Quit arguing with the witness.

3 MR. WZOREK: All right. Okay.

4 BY MR. WZOREK:

5 Q. So in other words, do you remember any incident in
6 SV-29, who was the engineer on that truck when I was there,
7 when we were towed in?

8 A. Yes, Sam Keys.

9 Q. Sam Keys was never an engineer.

10 A. He said he was.

11 Q. I said do you remember who the engineer was.

12 A. Sam Keys, no, not the engineer, the foreman.

13 Q. Okay.

14 A. The engineer I don't remember.

15 Q. Do you remember that you came out into the street with
16 Kenny and got the truck?

17 A. No, sir, I looked at it in the yard.

18 Q. Who was Kenny?

19 A. Kenny was working with me as a mechanic.

20 Q. And did the other engineer come up to Kenny and tell
21 him what was wrong, the engineer being Mr. McDermott?

22 A. I don't remember. All I remember, I was asked to
23 look at the rear end, the ring gear.

24 Q. Wasn't it a --

25 A. Broken teeth.

1 Q. Wasn't it a fact that the engineer came to you and
2 tell me not to make a report because he kicked the emergency
3 brake by accident?

4 A. I don't remember.

5 Q. Wasn't it that you and Kenny, since he was a brother
6 engineer, said, "Hey, Wzorek, just forget about this one"?

7 A. I don't know, sir. He was the mechanic. I took his
8 word.

9 Q. Well, how can you relate that I'm doing this damage?

10 A. I didn't say. I said possibly.

11 Q. Okay. Your further testimony was that through
12 negligence, through clutches popping off the foot, through
13 all this that's what caused it. You, in other words, sir,
14 were throwing the weight on the driver.

15 A. No, the first truck I knew about. I looked at the
16 first truck. The second truck I went to Schuster, if you
17 remember right. Krupa is the one that told me you were
18 driving the truck. I didn't say you were driving the truck.
19 I didn't say anything about SV-17. I just looked at the
20 broken parts. That's all I went to Schuster for.

21 Q. But, sir, you were implying that it was negligence on
22 the part of the driver. You didn't say nothing about Ford
23 paying the 50/50 warranty.

24 A. I would say whoever drove the truck, yes.

25 THE COURT: You're arguing with the witness. If

1 you're going to argue with the witness, quit asking him
2 questions.

3 MR. WZOREK: All right. Well, I'm trying to get into
4 --

5 BY MR. WZOREK:

6 Q. So in other words, maybe SV-229, I didn't really break
7 it. Is that possible?

8 MR. EX: Objection, your Honor, it's a confusing
9 question. He seems to be jumping from truck to truck.

10 THE COURT: Overruled.

11 BY MR. WZOREK:

12 Q. All right, we will stay on the SV-29. So that's the
13 one you know about, you don't know nothing about the other
14 one?

15 A. That's right.

16 Q. So, in other words, it could be that the emergency
17 brake was kicked by somebody because it was an old truck and
18 they had the emergency in the middle, is that not right?

19 A. Possibly anything could happen. I'm not just saying.
20 I just said it looked to me like a clutch was popped. That's
21 what would break it.

22 Q. In other words, could the emergency brake, while
23 you're driving down the street and someone kicks the
24 emergency brake --

25 A. No, you just stop the truck.

1 Q. You mean you're going about 25, 30 miles an hour and
2 it just stops the truck, nothing happens?

3 A. It wouldn't stop that truck, too much weight.

4 Q. That's your opinion?

5 A. Yes, sir.

6 Q. But then it was your opinion on a lot of these other
7 things, sir.

8 A. Yes, sir.

9 Q. It was your opinion that I wasn't --

10 A. To the best of my knowledge, yes, sir.

11 MR. WZOREK: No further questions.

12 MR. EX: Just a couple, your Honor.

13 RECROSS EXAMINATION

14 BY MR. EX:

15 Q. Ray, just to clarify, the Vactor truck that you were
16 testifying about before, that is the No. SV-17?

17 A. Yes, sir.

18 Q. And that's different, the SV-17 was not the orange
19 peel truck?

20 A. No, sir.

21 Q. Those were two separate trucks.

22 A. No, it's a heavier truck. It's a 50 ton truck.
23 Orange peel only weighs two and a half tons.

24 Q. Mr. Wasilewski, is it your practice to write up motor
25 truck drivers if you feel that they were negligent in some

1 way?

2 A. I could say yes and no, but that's not an answer so I
3 would say no.

4 Q. Well, let me ask you this: Do you leave it in the
5 hands of the foreman?

6 A. The foreman has the right to do that.

7 Sir? Pardon?

8 Q. I say you leave it in the hands of the foreman to do
9 the actual writeup?

10 A. Yes, sir.

11 Q. And you communicate with the foreman and then let the
12 foreman do whatever it is he feels is appropriate?

13 A. I tell him what is wrong or whatever it is and they
14 decide. I don't have nothing to do with firing anybody.

15 MR. EX: I have no further questions.

16 THE COURT: Thank you, sir, you may step down.

17 THE WITNESS: You're welcome.

18 (Witness excused.)

19 THE COURT: Have you got any more witnesses?

20 MR. WZOREK: No, sir.

21 THE COURT: All right, call your first witness.

22 MR. EX: Thank you, your Honor.

23 Your Honor, before we put on our first witness we
24 would like to move for a directed verdict.

25 THE COURT: Denied.

1 MR. WZOREK: Your Honor, can I ask a question?

2 THE COURT: What's your question?

3 MR. WZOREK: When would I know if this stuff is
4 relevant or not?

5 THE COURT: What stuff?

6 MR. WZOREK: The last thing that was talked about,
7 the trucks that weren't written up or weren't charged with.

8 THE COURT: At this point in time they have not made
9 that relevant, but I let them call that witness out of order
10 so they're going to put some more witnesses on in that area
11 that might solve some of the problems.

12 In the meantime, that business about what Krupa said
13 is hearsay.

14 MR. WZOREK: That's what I'm saying. So in other
15 words, if they didn't give me a chance to know these were
16 witnesses before time, I couldn't prepare for it.

17 THE COURT: What witnesses?

18 MR. WZOREK: Like Krupa and this other guy.

19 THE COURT: They didn't give you their names?

20 MR. WZOREK: No.

21 THE COURT: Why not?

22 MR. WZOREK: They gave me the day before court, the
23 day before pretrial when they gave me that thing at 4:30 and
24 they said sign it at 4:30, that's the first --

25 THE COURT: Wait a minute. That's the first time you

1 gave these witnesses' names?

2 MR. EX: No.

3 MR. WZOREK: Yes, it is.

4 MR. EX: Your Honor, when we prepared the pretrial
5 order and the preparation, he was notified as to who all our
6 witnesses were. In his discovery that he had previously
7 filed, we were hiding nothing, your Honor, we responded to
8 the discovery and none of the discovery directed to us in any
9 way previously --

10 THE COURT: Have a seat, sir. Let me see the
11 discovery. Let me see the first interrogatories.

12 MR. WZOREK: Can I say something?

13 THE COURT: Yes.

14 MR. WZOREK: Well, I never seen their stuff or
15 pretrial thing until 4:30 in the afternoon Monday.

16 THE COURT: This Monday?

17 MR. WZOREK: No, before the pretrial. That's the
18 first time I seen it.

19 THE COURT: When was the pretrial?

20 MR. WZOREK: It was on Tuesday last week and I seen
21 it Monday at 4:30.

22 THE COURT: All right.

23 MR. WZOREK: So I didn't know, you know. So I
24 objected to them because I didn't know --

25 THE COURT: Let me see.

1 There were only four questions asked in
2 interrogatories?

3 MR. EX: That's correct, your Honor. That was all
4 that I believe that was propounded to the City.

5 THE COURT: What?

6 MR. EX: That's all that were propounded.

7 THE COURT: Let me see the interrogatories, please.

8 Mr. Wzorek, do you have copies of the
9 interrogatories you sent to the City or your lawyer sent to
10 the City?

11 MR. WZOREK: I didn't get nothing from them.

12 THE COURT: Your lawyer sent them some questions. Do
13 you have copies of the questions your lawyer sent to them?

14 MR. WZOREK: No, sir. That's what I mean, I never
15 seen nothing.

16 MR. FILAR: Your Honor, maybe if we could see a copy
17 of that document, we would be able to -- possibly we don't
18 know it by name and we might be able to distinguish it from
19 the others.

20 THE COURT: Well, this document is an answer to the
21 plaintiff's interrogatories.

22 MR. WZOREK: Like, your Honor --

23 THE COURT: This is only four questions.

24 MR. EX: Your Honor, I believe we found the original
25 copy that was sent to us.

1 MS. SMITH: This was from Attorney Harry Schroeder,
2 your Honor.

3 THE COURT: All right. Now, Mr. Schroeder says:
4 "State with specificity the person or persons within the
5 Department of Sewers who authorized and/or determined that he
6 should be discharged from his employment with the
7 Department." And you haven't answered that.

8 "State with specificity the reason alleged by the
9 respondent and all facts in support thereof for the discharge
10 of the petitioner." And you say you object because it's too
11 inclusive "on the grounds that said interrogatory is
12 irrelevant, unduly burdensome, and is a matter of public
13 record."

14 * That's pure nonsense. Any witnesses' names that
15 you didn't give in response to those questions will not be
16 allowed to be called.

17 MR. EX: Well, your Honor, the only thing I can say
18 in response is that Mr. Wzorek was represented by counsel.
19 We never received --

20 THE COURT: You didn't answer the questions and you
21 made the objection and you stood on it. You have to live
22 with it. You're the one that didn't answer his questions.

23 MR. EX: Well, your Honor, I believe that as you
24 indicate, there were objections and the objections were never
25 moved upon to compel. *

1 THE COURT: There also was not any reasonable basis
2 for the objections. They're clearly improper objections,
3 clearly improper.

4 MR. EX: Well, your Honor, I can appreciate your
5 looking at our answers in that --

6 THE COURT: They are clearly improper Answers to
7 Interrogatories, sir. You were stonewalling. There is no
8 reason they should have to come in and raise objections to
9 those objections. You just refused to give them any
10 information, and you're going to live with it.

11 MR. EX: Well, your Honor, I will live with whatever
12 ruling you make.

13 THE COURT: You will. Anybody that you did not give
14 in response to those interrogatories you may not call.

15 Does that include this witness? What's this witness
16 on the stand for?

17 MR. EX: This is the witness that went to repair the
18 particular truck with the broken starter.

19 THE COURT: Which truck?

20 MR. EX: It was the --

21 MR. WZOREK: 216 and 225.

22 THE COURT: Does this witness know who was driving
23 the truck?

24 MR. WZOREK: He should, your Honor, he was out
25 there. I wasn't there, and he was out there.

1 THE COURT: Does he know you weren't there?

2 MR. WZOREK: He should know I was absent. I don't
3 know what he is going to testify to, but I'll ask him.

4 THE COURT: No. You're going to ask this witness --
5 do you know who was driving the truck?

6 THE WITNESS: That particular day, your Honor, he
7 was driving that truck -- he is supposed to, but this was
8 early in the morning I got there --

9 THE COURT: And he wasn't there?

10 THE WITNESS: No, the truck was there. I repaired
11 that truck and he drove the truck that particular morning.

12 THE COURT: Did you see him?

13 THE WITNESS: Yes, I did.

14 MR. WZOREK: I have a doctor's note showing I was
15 off.

16 THE WITNESS: The day before. You were telling me
17 that they --

18 THE COURT: Wait, wait, wait, wait. If you -- has
19 this truck got something to do with the firing?

20 MR. WZOREK: No.

21 MR. EX: Your Honor, this relates to one of the
22 particular trucks --

23 THE COURT: Has it got anything to do with the
24 firing?

25 MR. EX: Well, it relates to his work history.

1 THE COURT: Does it have anything to do with the
2 firing?

3 MR. EX: Your Honor, it relates to the firing in the
4 sense that yes, it was part of his work --

5 THE COURT: What has it got to do with his firing?

6 MR. EX: To show, as I indicated before with the
7 previous witness that he has put into issue his work
8 performance, and here is a man --

9 THE COURT: No, you put into issue his work
10 performance. You said that was the reason for firing and
11 none of the witnesses who fired him said that they knew
12 anything about this.

13 Now, how is this relevant?

14 MR. EX: He does know about --

15 THE COURT: And where was this information
16 transmitted to the people who actually fired the plaintiff?
17 Do you have any way to connect it up?

18 Don't waste my time if you don't.

19 MR. EX: Your Honor, on this particular truck that he
20 would be testifying about, we don't have a particular
21 foreman.

22 THE COURT: What date? You don't even know who the
23 foreman was. Is that what you're going to tell me?

24 MR. EX: Well, your Honor, there have been many
25 foremen that have come in and out of the employ of the City

1 of Chicago, and I must admit that we have not been able to
2 locate every foreman that --

3 THE COURT: Excuse me, what is this you have got?

4 MR. WZOREK: Your Honor, Ray says I wasn't there.

5 Here is a doctor's note showing I was off the day --

6 THE COURT: Wait, wait, wait, wait. Do you have a
7 witness to say that?

8 MR. WZOREK: The doctor's signature.

9 THE COURT: You didn't put that in evidence.

10 MR. WZOREK: I gave it to them the day that I was
11 sick, I gave it to the City.

12 THE COURT: You didn't put it in evidence in this
13 case.

14 MR. WZOREK: Oh. Can I do it when he is questioning
15 to show I wasn't there?

16 THE COURT: Go sit down.

17 Swear him in. You may put it in in rebuttal to this
18 witness.

19 MR. WZOREK: Oh, okay.

20 JOHN WIATR,
21 called as a witness herein, duly sworn, was examined and
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. EX:

25 Q. Mr. Wiatr, could you please state your name and spell

1 it for the record.

2 A. My name is John, W-i-a-t-r.

3 Q. And your address?

4 A. Previous address was 3130 West 43rd Street, and now my
5 present address is 5959 South Tripp 60629.

6 Q. Mr. Wiatr, could you please state your job title with
7 the City.

8 A. My job title is hoist engineer, also working as a
9 mechanic.

10 Q. How long have you been employed with the City?

11 A. Eleven years.

12 Q. Have you ever worked as a mechanic besides working
13 with the City?

14 A. Yes, I did.

15 Q. And what is your experience outside the City as a
16 mechanic?

17 A. Just repair any vehicle, you know, if I could be able
18 to fix it, I could fix it.

19 Q. And how long were you a member outside the City of
20 Chicago?

21 A. Oh, I would say last 25 years.

22 Q. All right. Mr. Waitr, do you recall an incident
23 involving Mr. Wzorek where a truck had a broken starter on
24 it?

25 A. I do.

1 Q. Why don't you describe that incident for us.

2 A. I come into 1st District at 21 South Peoria, and at
3 that time we had seven districts and I could have been sent
4 out to any district to any vehicle I could repair, and that
5 particular day, I don't recall exactly the day, I was sent to
6 75th and South Western Avenue, the City of Chicago Water
7 Department yard, and I supposed to replace the starter on
8 that particular vehicle.

9 Q. Now, when you got to that location at 75th and
10 Western, I take it you found the truck.

11 What kind of truck was that?

12 A. That's a Dodge 250 pickup truck. They call it
13 complaint crew's truck.

14 Q. When you got to that vehicle, did you see any motor
15 truckdriver with the truck?

16 A. Yes, Gene was over there.

17 Q. He was with the truck?

18 A. That's right.

19 Q. When you got to the truck what happened?

20 A. Well, the truck wouldn't start so I knew right away
21 the starter has got to be replaced, and I replaced the
22 starter. Then Gene started the truck and drove away.

23 Q. So you put in a new starter?

24 A. I put a new starter in it.

25 Q. And the truck after you put in the starter was fine?

1 A. That's right.

2 Q. What happened after you fixed the truck?

3 A. When I fixed up, Gene took off and I went back to my
4 yard, to 21 South Peoria.

5 Q. Did Mr. Wzorek ever tell you that the truck broke down
6 at another time when he wasn't at work?

7 A. He didn't tell me nothing about the truck. He only
8 told me the truck the day before he wasn't driving, someone
9 else was driving that truck.

10 Q. You don't know personally whether or not that was
11 true?

12 A. No, I don't.

13 Q. And you had fixed the truck after you left?

14 A. I fixed it, I did my job, and that was the end of
15 that.

16 THE COURT: So you don't know if he was driving it
17 when it was broken?

18 THE WITNESS: No, I don't.

19 THE COURT: Thank you.

20 What are you putting this witness on the stand for?

21 MR. EX: Well, your Honor, the witness is put on the
22 stand to show that he fixed a particular truck that the
23 plaintiff had driven and that Mr. Wasilewski testified later
24 had to be towed in.

25 THE COURT: Mr. Wasilewski told you -- well, he did

1 say it was towed in the first time. Then he said he drove it
2 in the second time.

3 MR. EX: Well, your Honor, I understand that Mr.
4 Wasilewski's testimony may have seemed a bit choppy at times,
5 but I do believe that the jumping --

6 THE COURT: Do you have any more questions of this
7 witness?

8 MR. EX: Yes.

9 BY MR. EX:

10 Q. Did you ever tell Mr. Wasilewski that the plaintiff
11 was sick on the day that he claims the truck was broken?

12 A. I didn't tell him nothing to Mr. Wasilewski because I
13 didn't know nothing. The only thing Gene told me the day
14 before he wasn't driving this truck, someone else was
15 driving. I don't know who was driving, but he told me, Gene
16 told me he wasn't driving the day before I went to repair
17 that truck.

18 Q. But you never told anything like that to Mr.
19 Wasilewski?

20 A. (No response.)

21 MR. EX: I have no further questions.

22 THE COURT: Do you have any questions?

23 MR. WZOREK: Yes, your Honor. I would like to
24 clarify what -- maybe what you're thinking is wrong. This is
25 not 229, this is 216 and 225.

1 Now, the reason I couldn't possibly be driving it
2 the day before is because the day before was a Sunday and
3 nobody was driving.

4 THE COURT: You're not testifying.

5 MR. WZOREK: I'm sorry. Okay.

6 CROSS EXAMINATION

7 BY MR. WZOREK:

8 Q. You went to the district, you were called to come to
9 the district to fix a truck, right?

10 A. That's all.

11 Q. Now, Mr. Wasilewski testified that I was absent that
12 day. He testified that he knew it. I would like --

13 A. That I don't know, what Mr. Wasilewski testified. I
14 know what my job was to go fix it and come back.

15 Q. How many trucks did you look at that day?

16 A. Just that particular one.

17 Q. All right. Wasn't there a 225 that was flooded and
18 you went out there and you looked at the flooding as Mr.
19 Wasilewski sent you out the first time?

20 A. I don't recall. I recall one particular case to go
21 replace the starter.

22 Q. Mr. Wasilewski testified that he sent you out and one
23 truck was flooded and you got it going and the driver drove
24 away.

25 Then you came back -- I'm asking is this not what he

1 is telling you. When you came back to the yard, did you not
2 receive another call to go out for a starter?

3 A. No, I did not.

4 Q. Then, sir, how did you know about replacing the
5 starter when you told him it was the starter at first?

6 A. In the morning when I was called out to bring the
7 starter because it has got a bad starter, that truck.

8 THE COURT: It had a bad starter.

9 THE WITNESS: It had a bad starter.

10 THE COURT: Ahead of time?

11 THE WITNESS: Right, before I left over there.

12 THE COURT: Did you know that, counsel?

13 MR. EX: Excuse me?

14 THE COURT: Did you know that?

15 MR. EX: The fact that it had a bad starter?

16 THE COURT: Yes.

17 MR. EX: Yes, I believe his testimony was that --

18 THE COURT: And you're putting this witness on the
19 stand to say that he broke a starter that was a bad starter?

20 MR. EX: No, your Honor.

21 THE COURT: What are you putting this witness on the
22 stand for?

23 MR. EX: We put him on for purposes of showing that
24 he repaired a starter. The plaintiff was with that truck
25 and then subsequently after he replaced the starter, it was

1 towed back because it broke down again.

2 THE COURT: And it was his fault that the bad starter
3 broke down?

4 MR. EX: Well, I believe Mr. Wasilewski --

5 THE COURT: I asked you did you know that this
6 witness knew that that was a bad starter.

7 MR. EX: Yes, I believe that-- yes.

8 THE COURT: Then what did you put him on the stand
9 for?

10 MR. EX: As I'm trying to explain, your Honor, I put
11 him on the witness stand just to point out that he replaced
12 the starter at the beginning of that day. Later that day--

13 THE COURT: But you put Mr. Wasilewski on the stand
14 to suggest that he broke the starter, and that that was poor
15 performance.

16 MR. EX: Mr. Wasilewski came, I believe, to testify
17 that he then --

18 THE COURT: Is there any more questions you want to
19 ask this witness?

20 MR. EX: No.

21 THE COURT: You may step down, sir.

22 MR. WZOREK: May I put this in?

23 THE COURT: No, you're going to put that in in
24 another fashion.

25 MR. WZOREK: I was going to ask him, you know --

1 THE COURT: He doesn't know anything about the
2 doctor's signature.

3 MR. WZOREK: How could I be there?

4 THE COURT: You wait.

5 Put your testimony on and don't put on any more
6 witnesses that are going to be contradictory to what you're
7 trying to prove.

3 MR. EX: Well, your Honor, I don't believe that the
9 witnesses were contradictory. However, I wanted to put on
10 two particular witnesses that were going to testify about the
11 incident with the Vactor truck, but if you're -- I guess I'm
12 a little confused as to whether or not you're --

13 THE COURT: You're confused, sir. You just told us
14 by your testimony of your witnesses that this man broke a
15 starter, and that was bad performance, and then you put on
16 one witness that says that he didn't tow it -- that he towed
17 it into the garage and then five minutes later he says he
18 drove it into the garage, and then you put this man on the
19 stand to say he broke the starter when he says he doesn't
20 know if he was driving it or not, and then he says it was a
21 bad starter in the first place.

22 Now, what in heaven's name you trying to do?

23 MR. EX: Well, your Honor, I could call back Mr.
24 Wasilewski if you would want to clarify --

25 THE COURT: No way. Do you have any other

1 witnesses?

2 MR. EX: Yes, we have, I believe, four more
3 witnesses.

4 THE COURT: You put them on right after lunch at
5 1:30.

6 MR. WZOREK: Your Honor, didn't you object to two of
7 the witnesses, that I wasn't given --

8 THE COURT: If you were not the given the names in
9 discovery, then he cannot put the witnesses on.

10 MR. WZOREK: Tom Krupa and Joe Frcek.

11 THE COURT: See you at 1:30.

12 (Recess from 12:30 p.m. to 1:30 p.m.)

13 THE COURT: Let's see, everybody is present.

14 Call your next witness.

15 MR. EX: Your Honor, just for the record, I
16 understand your previous ruling, but I would like for the
17 record to just request an offer of proof as to two
18 individuals who would testify as to the Vactor incident that
19 had been testified to earlier.

20 I understand these are two people that were not
21 previously disclosed in discovery, but were on the pretrial
22 order and I know what your previous ruling was.

23 THE COURT: You gave the pretrial order to counsel at
24 4:30 in the afternoon the day before the trial, didn't even
25 give him a chance to respond to it.

1 MR. EX: Well, your Honor, the only thing I can say
2 is that that is what we were ordered to do by this Court.

3 THE COURT: I didn't say to give it to him that late.

4 MR. EX: Well, we did the best we could, your Honor.

5 THE COURT: That's what you say. You didn't live up
6 to the order, though.

7 MR. EX: We tried our best, your Honor, and we would
8 just for the record like to request to make an offer of proof
9 as to the testimony of Joseph Frcek and Tom Krupa, who had
10 worked with --

11 THE COURT: Go ahead.

12 MR. EX: I would like to just call Mr. Frcek.

13 MR. WZOREK: Can I object to that, your Honor?

14 THE COURT: Wait a minute. You can tell me what your
15 offer of proof is now.

16 MR. EX: What Mr. Frcek would testify to, your Honor,
17 is that he had worked with Mr. Wzorek on the Vactor truck and
18 had a chance to observe how he drove the truck on the day in
19 question when the particular --

20 THE COURT: Is he a supervisor?

21 MR. EX: He was what was called a subforeman. He was
22 in charge of the particular truck.

23 THE COURT: Did he report him?

24 MR. EX: Yes. What he did was that he reported the
25 incident to his supervisor, the foreman, who is the other

1 individual that I want to make an offer of proof on, Mr.
2 Krupa, and what he did is that he reported the incident to
3 Mr. Krupa.

4 Mr. Krupa later was called by Commissioner Quigley
5 inquiring as to what had happened in the incident, and that
6 they all ended up going, or I should say Mr. Krupa and Mr.
7 Wasilewski ended up going to the Schuster Repair Company and
8 ended up having to try to get warranty coverage, but were
9 unable to get warranty coverage because of the manufacturer's
10 representative telling them that they felt that it was not
11 due to to any defect in the parts itself, but was rather a
12 function of the way the individual who was driving the truck
13 at the time conducted himself.

14 MR. WZOREK: Objection, your Honor, objection. Joe
15 Frcek was just on the truck. He never reprimanded me. Krupa
16 never reprimanded me either. There is no charges to this.
17 Your Honor, they didn't even tell me to prepare myself for
18 these kind of people.

19 Mr. Wasilewski up there told you Ford paid 50
20 percent of the thing.

21 THE COURT: I tell you what, counsel. Now, I have
22 alerted you to the need for investigation. Now, you have
23 not given these names in, prior to trial in response to
24 interrogatories.

25 MR. EX: That's correct.

1 THE COURT: You have not given the names to the other
2 side sufficiently in advance for them to examine them, to
3 depose them, or to cross examine them, and you have not in
4 any way connected up that incident to this discharge in any
5 way, shape, or form.

6 I'm going to let you put them on the stand if you
7 wish, but if you don't connect them up to the discharge, I'm
8 going to enter sanctions against you.

9 MR. EX: If I may, your Honor --

10 THE COURT: Because I don't have enough time to fool
11 around. You know, I have got another bench trial going in
12 about twenty minutes, and I have got another trial starting
13 tomorrow, and I don't have time to fool around.

14 You go ahead understanding that, and the fact that
15 this is a bench trial, you go ahead and put your witnesses
16 on.

17 MR. EX: Okay. If I just may say one thing --

18 THE COURT: Don't waste my time.

19 MR. EX: I am trying not to. I want to be very
20 candid with the Court.

21 What Mr. Krupa, who was the foreman, will testify, I
22 believe, is that he in fact informed Commissioner Quigley of
23 that particular incident and he believes that he wrote
24 something up.

25 THE COURT: What do you mean, he believes?

1 MR. EX: He believes that he wrote up a report.

2 THE COURT: He believes he wrote something up?

3 MR. EX: Yes.

4 THE COURT: I won't accept that testimony and you
5 know it. Is that your offer of proof?

6 MR. EX: That is our offer of proof, and we concede
7 that there is nothing in --

8 THE COURT: Quit talking and call your witness.

9 MR. EX: Well, I mean --

10 THE COURT: Quit talking and call your witness.

11 MR. EX: That is the extent of our connection.

12 THE COURT: Don't call your witness.

13 MR. EX: I'm not trying to defy the Court's order.

14 THE COURT: Don't call your witness then.

15 Have you finished, are you resting?

16 MR. EX: I just wanted to get my offer of proof in.

17 THE COURT: I told you, you don't need an offer of
18 proof. I told you to put your witnesses on and you keep
19 talking.

20 MR. EX: Well, I would like to do that, but --

21 THE COURT: Well, would you or wouldn't you, sir?

22 MR. EX: I would, your Honor.

23 THE COURT: Well, then put them on.

24 MR. EX: Thank you, your Honor.

25 JOSEPH FRCEK,

1 called as a witness herein, duly sworn, was examined and
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. EX:

5 Q. Mr. Frcek, could you please state your name and spell
6 it for the record.

7 A. Joseph, Frcek, F-r-c-e-k.

8 Q. Your address?

9 A. 1034 South Mayfield.

10 Q. How long have you worked for the City, sir?

11 A. Thirteen years.

12 Q. What is your current position?

13 A. Apprentice hoisting engineer.

14 Q. Have you ever worked on a Vactor truck, sir?

15 A. SV-17.

16 Q. How long have you worked on Vactor trucks?

17 A. Eight years.

18 Q. SV-17 is a particular Vactor truck?

19 A. Yes.

20 Q. How long did you work on that particular truck?

21 A. About three and a half years.

22 Q. Are you acquainted or familiar with operation of that
23 truck?

24 A. Yes, sir, very much.

25 THE COURT: When is the first time you worked on it?

1 THE WITNESS: About 1979, '78.

2 BY MR. EX:

3 Q. What is the approximate size?

4 THE COURT: Did you stop working on them in 1981,
5 '82?

6 A. No, it was -- '85 I got off of those and went to
7 something else.

8 THE COURT: That's six and a half years.

9 THE WITNESS: Yes, but I mean I was on them for the
10 nine years.

11 THE COURT: Go ahead.

12 BY MR. EX:

13 Q. Can you tell us what the approximate size or weight of
14 that truck is?

15 A. The approximate weight is about 55,000 pounds.

16 Q. Did you ever have an opportunity to work with Mr.
17 Wzorek on SV-17?

18 A. Yes, he drove for me on a couple of times, especially
19 that one day.

20 Q. What one day is it that you're referring to, sir?

21 A. Well, the day of the incident with the clutch. We
22 were pulled up to the district that night, 3129 South
23 Shields, and the engineer and I usually back the truck up
24 into the garage, help him back the truck up watching for
25 people and that.

1 Q. Where are you placed or where are you physically
2 situated when you're helping him back up the truck?

3 A. I was on the right rear side of the truck and the
4 engineer was on the left rear side of the truck.

5 Q. Now, on the particular incident that you're just
6 referring to, can you tell me, how old was SV-17 at the time?

7 A. Not quite a year old.

8 Q. What was the condition of that truck at the time?

9 A. Very good condition.

10 Q. You had previous opportunities to ride on that truck,
11 to examine its condition?

12 A. Yes.

13 Q. Prior to the date that you worked with Mr. Wzorek?

14 A. Yes.

15 MR. WZOREK: Objection, your Honor, he is not a
16 mechanic to say about the driving part of the truck. He just
17 works in the rear.

18 THE COURT: I'm aware of that, Mr. Wzorek.

19 MR. WZOREK: Oh. Thank you.

20 BY MR. EX:

21 Q. And you were a subforeman on that particular vehicle
22 at the time?

23 A. Yes.

24 Q. What is the significance of being a subforeman?

25 A. I hand the locations to the driver and, you know, the

1 different jobs that we have for the City and to make sure
2 that the jobs are completed and done right.

3 Q. You had -- you say you had worked with Mr. Wzorek on
4 at least two occasions, is that correct?

5 A. Yes.

6 Q. And how would you describe him as a worker in your
7 experience?

8 A. Well, things were, didn't seem like he cared too
9 much. Sometimes things were a joke.

10 MR. WZOREK: Objection, your Honor, how does he know
11 what's in my mind?

12 THE COURT: Sustained.

13 MR. WZOREK: Or what I care about.

14 THE COURT: Sustained.

15 BY MR. EX:

16 Q. So you're saying that you perceived his work
17 performance as having an attitude that seemed like he didn't
18 care about his work?

19 MR. WZOREK: Objection, your Honor.

20 THE COURT: It's a leading question, counsel, and Mr.
21 Wzorek is not a lawyer, can't be expected to anticipate
22 that. Behave yourself.

23 MR. EX: I'm sorry, your Honor.

24 BY MR. EX:

25 Q. How would you characterize the attitude that Mr.

1 Wzorek had toward his work?

2 THE COURT: I won't allow that question. It was
3 tainted by the previous question.

4 BY MR. EX:

5 Q. In your past experience with Mr. Wzorek, how would you
6 describe him as a worker?

7 A. Seemed like he was carefree, and --

8 MR. WZOREK: Objection to "seemed like."

9 THE COURT: Sustained.

10 BY MR. EX:

11 Q. Mr. Wzorek, he was the driver when you were on the
12 Vactor?

13 A. He was the driver of SV-17, yes.

14 Q. How would you describe his driving abilities?

15 A. Well, the driving, the driving, when he was driving
16 it, we had, during the period of the day, he was driving fast
17 where he shouldn't have been because of the truck and its
18 weight, and we always carried water --

19 MR. WZOREK: Objection, your Honor. Objection to the
20 point that did you ever report that I drove fast to anybody?

21 THE COURT: Now, just a moment. You're going to get
22 a chance to cross examine.

23 MR. WZOREK: Oh.

24 THE WITNESS: And the night that we were backing it
25 in with the engineer and myself standing in the back of the

1 truck to guide him into the garage, there was an excessive
2 amount of, you know, racing of the engine, and the clutch
3 blew on the truck when he was backing it in.

4 BY MR. EX:

5 Q. You were saying before that when you were assisting
6 Mr. Wzorek back the truck into a particular yard, is that
7 right?

8 A. Yes.

9 Q. So you were situated in the right rear, you said?

10 A. Right rear of the truck.

11 Q. And you were able to hear what? I'm sorry.

12 A. The engine was revved up much higher than what it
13 should have to allow the clutch to come out to back it up
14 into the garage and that's when I heard the, seen some smoke
15 and then an explosion and then the clutch, parts of the
16 clutch were laying on the ground. Even the asphalt on the
17 street started on fire.

18 MR. WZOREK: Objection to that, your Honor. I don't
19 think a clutch is going to burn a street.

20 THE COURT: You're going to get a chance to cross
21 examine him.

22 THE WITNESS: It was an asphalt street, and the heat
23 of the metal started -- it wasn't a big area, it was a little
24 spot underneath the truck where the pieces of hot metal hit
25 the asphalt.

1 BY MR. EX:

2 Q. Did you have a chance to observe what was going on
3 underneath the truck at any time?

4 A. Yes, I walked around and I asked him, "Well, what did
5 you do?" He said, "Well, it's down now."

6 Q. Did he say or do anything else at that point?

7 A. He laughed and that was it.

8 Q. Did you report that particular incident to anyone?

9 A. I reported it to my district foreman, Tom Krupa,
10 because it was my responsibility to do that.

11 Q. What happened at that point?

12 A. Well, after I reported it to Mr. Krupa, then a while
13 later they came and they towed the truck away.

14 Q. That was after you called Mr. Krupa?

15 A. Yes.

16 Q. You stayed with the vehicle until that time?

17 A. I stayed until quitting time and then the City tow
18 truck came and towed the machine away.

19 Q. When you talked to Mr. Krupa, did you tell him who was
20 driving the vehicle at the time?

21 A. Yes, I did.

22 Q. Did you describe the situation and what happened?

23 A. I described what did happen.

24 MR. EX: I have no further questions of this
25 witness.

1 MR. WZOREK: Hi, Joe.

2 THE WITNESS: Gene.

3 CROSS EXAMINATION

4 BY MR. WZOREK:

5 Q. Joe, you weren't in front of the truck, you weren't in
6 the cab of the truck when this happened, were you?

7 A. No, I was in the right rear of the truck.

8 Q. When we were on the street and you said the clutch was
9 going, weren't you one of the two guys told me, "Try to get
10 it in the garage so we can work on it," Joe?

11 A. No.

12 Q. Yes, you did -- well, okay. You were both in back of
13 the truck and you were hearing all kinds of noises, right,
14 Joe?

15 A. I said I heard the excessive amount of engine noise.

16 Q. Who was John Pasdale, Joe?

17 A. The operator of the truck, the engineer.

18 Q. Didn't Joe Pasdale go down with a part of the truck
19 and show them it was defective?

20 A. Go where?

21 Q. A part of the clutch. Down to Schuster's and
22 Schuster's and Ford paid half the warranty on that truck,
23 Joe?

24 A. I don't know what Schuster's paid as far as that. I
25 had nothing to do with that.

1 Q. Mr. Wasilewski -- if I told you that Mr. Wasilewski so
2 stated that they paid half because of a defective part, what
3 would you say to that, Joe?

4 A. Then they did.

5 Q. Well, then, Joe, wouldn't that be like admitting that
6 the damage was from the truck too?

7 MR. EX: Objection.

8 THE COURT: Sustained.

9 THE WITNESS: I have nothing to do with as far as
10 saying who pays for what.

11 THE COURT: Objection sustained.

12 BY MR. WZOREK:

13 Q. As far as smiling or laughing, Joe, are you a
14 psychiatrist or doctor who can tell if that relieves pressure
15 or anything on a person?

16 A. No.

17 MR. EX: Argumentative.

18 THE COURT: Sustained.

19 BY MR. WZOREK:

20 Q. To the best of your knowledge, Joe, did I do this on
21 purpose, do you think, totally on purpose, Joe, try to kill
22 myself?

23 MR. EX: Excuse me, a compound question.

24 MR. WZOREK: Okay, sorry. What I'm trying to get at
25 right now --

1 THE COURT: We know what you're trying to do.
2 Contain yourself.

3 MR. WZOREK: Okay.

4 BY MR. WZOREK:

5 Q. In other words, Joe, do you think anybody would do
6 this in order to try to injure themselves, Joe?

7 A. There was no reason for an excess amount of racing the
8 engine to back this truck up into the garage.

9 Q. One other thing, Joe. Have I ever been on a Vactor
10 before, Joe?

11 A. That I don't know.

12 Q. What if I was to tell you, Joe, that it was the first
13 time when I was with you that I have ever drove a Vactor and
14 my district foreman said, "Go try it," what would you say to
15 that, Joe?

16 MR. EX: Objection, foundation. He hasn't
17 established that he knew that.

18 THE COURT: On the grounds stated, overruled.

19 BY MR. WZOREK:

20 Q. Otherwise, have I ever caused any trouble with you or
21 anybody else that you know of like arguing or anything?

22 A. Not with me.

23 Q. Joe, do you know if I was written up for this or
24 punished or anything was done about this?

25 A. No, I don't know.

1 Q. You never heard of anything like that did you, Joe?

2 A. I don't know if you were, no.

3 Q. If I told you I wasn't, Joe, would you believe me?

4 MR. EX: Objection, argumentative.

5 THE COURT: Sustained.

6 BY MR. WZOREK:

7 Q. Well, then in other words, you don't know if I was
8 written up or not?

9 A. No.

10 THE COURT: He said that already.

11 MR. WZOREK: I guess that's it, your Honor.

12 MR. EX: We have no further questions.

13 THE COURT: I got a couple of questions.

14 You saw this man drive that truck once, twice.

15 THE WITNESS: He was with me the one day, yes.

16 THE COURT: What do you mean he was with you, one
17 day?

18 THE WITNESS: He drove the truck, yes.

19 THE COURT: So you never saw him drive that kind of
20 truck before or after?

21 THE WITNESS: No, I never did.

22 THE COURT: So you don't know if he had any
23 experience with it?

24 THE WITNESS: No, I don't.

25 THE COURT: Did anybody discuss your testimony in

1 this matter with you before today?

2 THE WITNESS: No, sir.

3 THE COURT: Have you ever driven one of those
4 trucks?

5 THE WITNESS: No, sir.

6 THE COURT: Have you ever shifted the gears on the
7 truck.

8 THE WITNESS: No, sir.

9 THE COURT: Do you drive trucks?

10 THE WITNESS: Yes.

11 THE COURT: Gear shift trucks?

12 THE WITNESS: Yes.

13 THE COURT: You say Pasdale was the operator of the
14 truck. What does that mean?

15 THE WITNESS: The operator of the truck is what
16 you're referring to, that was John.

17 THE COURT: No, that's what you referred to.

18 THE WITNESS: Pasdale.

19 THE COURT: What does that mean?

20 THE WITNESS: He operates the back half of the truck
21 where, from the vacuum and to jet rod, to flush the sewers
22 with clear water.

23 THE COURT: Okay. Thank you, sir.

24 THE WITNESS: Okay.

25 (Witness excused.)

1 THE COURT: Call your next witness.

2 MR. EX: Thank you.

3 THOMAS E. KRUPA,

4 called as a witness herein, duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. EX:

8 Q. Can you please state your full name and spell it for
9 the record.

10 A. Thomas E. Krupa, K-r-u-p-a.

11 Q. And your address, sir?

12 A. 6686 North Olympia.

13 Q. What is your current job title with the City?

14 A. Foreman of Sewer Cleaning, district foreman.

15 Q. How long have you worked with the City?

16 A. Twenty years in September.

17 Q. How long have you been a district foreman, sir?

18 A. Almost seventeen years.

19 Q. Have you ever been a district foreman working over the
20 supervision of Vactors?

21 A. Yes.

22 Q. Mr. Wzorek, did he ever work for you or drive a truck
23 under your supervision?

24 A. Yes.

25 Q. Do you recall any particular incident where he drove a

1 Vactor, SV-17?

2 A. Yes.

3 Q. What can you recall about that particular incident?

4 A. Well, my first notice was when Joe Frcek, the
5 subforeman in charge of the crew, called me and told me late
6 '82, early 1983 that a clutch had blown up on the truck
7 backing into the 6th District yard on 3129 South Shields and
8 I asked him, "Well, how could that happen," and he says,
9 "Well, the driver was revving the engine, you know, gunning
10 it, whatever" --

11 MR. WZOREK: Objection, your Honor, wouldn't that be
12 hearsay?

13 THE COURT: Yes. Well, no, I'm going to let it in,
14 though, because it's a report in the course of his business
15 as to what he might have thought.

16 Keep talking.

17 THE WITNESS: And in the process of doing that,
18 revving the engine and having the transmission in reverse and
19 backing into the garage, this clutch blew up. There was a
20 loud noise and it fragmented like -- I never actually seen
21 shrapnel, but I imagine like shrapnel, they told me a couple
22 of pieces put dents in the floorboard and one piece broke out
23 part of the fiberglass fender.

24 BY MR. EX:

25 Q. When you found out about this incident, what did you

1 do?

2 A. I called back to the district foreman then and --

3 which was Mr. Madia -- and asked him if it's blocking his

4 driveway, was he going to take action, did he want me to take

5 action to get the truck out from blocking his driveway, and I

6 found out that they had called for a tow truck and the tow

7 truck was going to come tow it, and it kind of ended the

8 problem for that day.

9 Q. Who was the Commissioner at the time that this

10 happened?

11 A. Commissioner was Edward Quigley.

12 Q. Did you ever have any discussions with Commissioner

13 Quigley about this incident?

14 A. Yes. I don't know exactly how the word got back to

15 Commissioner Quigley that this occurred, I didn't call him at

16 that time, but Mr. Wasilewski, the engineer foreman kind of

17 in charge of repairs, found out it was towed to Schuster's

18 Equipment Corporation on South Morgan, 3500 or 3700 South

19 Morgan, and there was going to be a big bill and this sort of

20 a thing had to be reported to the Commissioner, and I believe

21 Wasilewski did, and the Commissioner knew about this much at

22 the time, and he called me and asked me, you know, "What's

23 happened?" You know, this is, I think, like the next

24 morning.

25 And I had explained to him what happened and I think

1 I made out a report as to everything that had happened, that
2 I could find out about.

3 Q. Did you ever actually go to Schuster's and look at the
4 truck?

5 A. Yes, we got into a debate with -- Ford owned the cab
6 and chassis. The manufacturer was Ford for the cab and
7 chassis, and the Commissioner at the time wanted Ford to pay
8 for this clutch.

9 Q. Why did the Commissioner want Ford to pay for it?

10 A. Well, his main reason was that we had bought a lot of
11 Ford trucks underneath, what we call underneath all of our
12 equipment, where if you had this built or that built, we used
13 primarily Ford cab and chassis because they're very good
14 engines, a very good cab and chassis, and based on doing
15 business with them, he thought they should stand behind us,
16 it was in the warranty period, and yet they refused to do it
17 on the basis of a warranty because they said there was no way
18 with normal wear and tear or use that something like this
19 could happen and they agreed to pay something like eight
20 hundred out of a two to a three thousand dollar bill based
21 only on the fact that we did business with Ford so they were
22 going to pay a certain portion, but that it was not covered
23 under the warranty.

24 Q. Were you part of these discussions with the Ford
25 manufacturer?

1 A. Yes, I was assigned to, you know, attempt to try to
2 demand from them that they pay the whole thing, as at that
3 point that Schuster's Equipment Corporation called Ford and
4 they sent out an area representative, who I met at Schuster's
5 with me, Mr. Wasilewski from the Sewer Department, an area
6 representative, and one of the managers from Schuster's
7 Equipment Corporation.

8 And we stood there on the shop floor and discussed
9 this whole thing and, you know, we were going to try to get
10 them to pay as much as we could and they were pretty adamant
11 about it wasn't normal wear and tear or normal breakdown.

12 Q. How much did you say that the manufacturer ended up
13 paying?

14 A. Well, I remember the thing -- I'm a little vague on it
15 -- being like between two and three thousand dollars for the
16 whole bill and they only were going to pay about eight
17 hundred. I remember it was like a third or a quarter of
18 what the whole thing was and I thought to myself well, my
19 boss Quigley isn't going to be too happy, them only paying a
20 third or a quarter of the whole thing.

21 I think what it amounted to is they agreed to supply
22 the parts and Schuster's agreed to do the labor, although we
23 would have to pay them, it was going to be limited, and I
24 think later on they decided to weld this case or so that's
25 part of the clutch rather than replace it because that would

1 save them money and I wasn't happy with that, but it seemed
2 to be the best that they were going to do. It was our newest
3 Vactor.

4 MR. EX: I have no further questions, your Honor.

5 MR. WZOREK: Hi, Tom.

6 THE WITNESS: How are you doing?

7 CROSS EXAMINATION

8 BY MR. WZOREK:

9 Q. Do you think, talking about this incident, was
10 purposely done or could it have been an accident, a one in a
11 million shot?

12 A. Well, I'll tell you the truth, from what I remember, I
13 asked -- I started driving a truck when I was sixteen, and
14 I'm familiar with trucks, and I asked and my understanding
15 was then that you were gunning and racing the engine.

16 Q. That was hearsay, though, was it not, Tom? You heard
17 that from someone.

18 A. Well, it was the report to me, a district foreman,
19 from my subforeman, who was in charge of the crew.

20 Q. Okay, but that's just like, would be hearsay, right?

21 A. Well, I don't consider that hearsay. I mean, I'm not
22 a lawyer.

23 MR. EX: Objection.

24 THE COURT: You asked the question.

25 MR. WZOREK: Would that be hearsay, your Honor?

1 THE COURT: I'm not going to strike it, if that's
2 what you mean.

3 BY MR. WZOREK:

4 Q. Okay, now, Tom, you have seen a lot of clutches break
5 down, right?

6 A. Not like that.

7 Q. No, I'm asking did you see a lot of clutches break
8 down?

9 A. No, I have seen them wear out.

10 Q. They never wore out like that one, right?

11 A. No.

12 Q. Can you believe that that's possible that could happen
13 in one day, Tom, with all that a truck goes through?

14 A. To my way of thinking, it was -- I have never heard of
15 a clutch blowing up like that other than at a dragstrip.
16 That was the first time I heard of a clutch being blown up.
17 I have got to think that's a remote event.

18 Q. So in other words, a remote event, yes or no, it could
19 have been a defective part for that to happen that kind of
20 way in one day?

21 A. I don't think so.

22 Q. Well, that's hearsay or your opinion, is it not?

23 MR. EX: Objection.

24 THE WITNESS: I don't know why every time I don't
25 agree with you, you think what I said is wrong. I can't

1 understand that.

2 BY MR. WZOREK:

3 Q. No, I'm just asking if that's your opinion.

4 A. Based on my experience.

5 Q. Then in other words, if I wasn't written up for it
6 that means people over you didn't think that it was my fault,
7 am I not right, Tom?

8 A. I can't say what they think or what they don't think.

9 Q. But you're giving opinions and you're giving what Joe
10 says?

11 A. Well, I'm basing my opinion based upon what happened
12 there at the time, not on what other people think.

13 Q. But you were not there at the time.

14 A. No, I wasn't.

15 Q. So then you can't give an opinion of what happened.

16 A. I was in my office.

17 Q. How far away was your office?

18 MR. EX: Objection. I think he has already stated
19 that he wasn't at the scene.

20 THE COURT: Overruled. How far away was your
21 office?

22 THE WITNESS: Madison and Peoria.

23 THE COURT: Is that a mile or two?

24 THE WITNESS: Four miles.

25 BY MR. WZOREK:

1 Q. So in other words, you don't have the final say on
2 what really happened?

3 MR. EX: Objection as to what he means by "final
4 say."

5 MR. WZOREK: Well, to write me up.

6 BY MR. WZOREK:

7 Q. In other words, you didn't write me up?

8 A. I'll tell you, I think I remember at the time --

9 Q. It's hearsay.

10 MR. EX: Objection.

11 THE COURT: It's not hearsay.

12 THE WITNESS: I watch TV too. This is kind of
13 ridiculous.

14 I think I remember at the time writing you up, if
15 not a conventional suspension or reprimand, but a report to
16 the Commissioner, because I know I got two or three phone
17 calls from him on this, and he was quite irate and that was
18 enough to get me extremely excited enough to find out all I
19 possibly could about this, and I had to make two or three
20 trips to this Schuster, so I did become pretty well versed in
21 the whole incident.

22 BY MR. WZOREK:

23 Q. All right. But if there was a write-up, where is the
24 write-up, Tom?

25 A. I mail them to the main office to Commissioner Quigley

1 and as to where it is now, I couldn't say. That district has
2 been disbanded and so I don't know where the records are.

3 Q. Then in other words, Tom, the Commissioner must have
4 not seen fit to write me up or give me time off.

5 A. I can't testify as to what he did or didn't do.

6 Q. Do you know if I have been written up for that?

7 MR. EX: Objection, I believe it was asked and
8 answered.

9 THE COURT: Sustained.

10 BY MR. WZOREK:

11 Q. But you personally have no knowledge of what happened
12 on that day?

13 A. The report I got from the subforeman I think is valid
14 and the conversations I had with him subsequently.

15 Q. When were you told to be a witness in this case, Tom,
16 or asked to be a witness in this case, Tom?

17 A. About a week ago.

18 MR. WZOREK: I don't think that's valid enough time
19 to give me a chance to cross examine him or bring in experts.

20 THE COURT: That's argument.

21 MR. WZOREK: Oh.

22 THE COURT: You're examining the witness right now.

23 BY MR. WZOREK:

24 Q. So you were just called in about a week ago?

25 A. Yes.

1 Q. So then in other words, your testimony had nothing to
2 do with my firing?

3 MR. EX: Objection.

4 THE COURT: Overruled.

5 Did it?

6 THE WITNESS: I wouldn't know.

7 THE COURT: Any more questions?

8 MR. WZOREK: I guess that's it.

9 THE COURT: I have a couple.

10 You say this machine was new?

11 THE WITNESS: Yes, sir.

12 THE COURT: How new?

13 THE WITNESS: Well, I would say less than a year old.

14 THE COURT: Had it been used much?

15 THE WITNESS: Six, eight months.

16 THE COURT: Had it been sitting in a garage?

17 THE WITNESS: I don't understand what you mean by
18 that.

19 THE COURT: Is this the one we were talking about?

20 MR. WZOREK: Yes, sir. Can I ask him or --

21 THE COURT: Go ahead.

22 BY MR. WZOREK:

23 Q. The Commissioner got these new trucks, he put them in
24 the 6th District, and kept them there for months, and then
25 they were used, Tom, is that not true?

1 A. Yes, that's fairly true.

2 Q. So in other words, in your opinion now why was it kept
3 there for six months without being used and then put on the
4 street?

5 A. Okay. You said originally for a few months. He had a
6 habit of letting it sit there for a month, six weeks,
7 anything, not just this truck, but all kinds of equipment
8 until a good crew was put together and everything was checked
9 out and some few other things were -- we had to add boxes to
10 it or safety lights or fire extinguishers, and once this was
11 all done and this was the newest \$160,000 machine, then we
12 got a crew together and then it was assigned.

13 THE COURT: Why did you need a good crew?

14 THE WITNESS: A good crew?

15 THE COURT: Yes.

16 THE WITNESS: Because this was our best, most
17 elaborate machine of this type. It was kind of advanced,
18 technologically advanced. I wrote the specifications on it
19 or at least part of them.

20 THE COURT: How long was Mr. Wzorek assigned to it?

21 THE WITNESS: At that time he was with me just for a
22 few days.

23 THE COURT: Had he ever driven it before?

24 THE WITNESS: This particular truck? I doubt it.

25 THE COURT: Did you have him checked out in it?

1 THE WITNESS: Checked out insofar as competency?

2 THE COURT: Anybody train him how to use it?

3 THE WITNESS: Well, I had seen him driving all the
4 other sorts of trucks. I was a civil service truckdriver,
' and I had seen him driving City four-wheelers.

6 THE COURT: You said good crew now, you said you
7 wanted to be sure you had good people on it.

THE WITNESS: He was not a permanent crew.

9 THE COURT: Oh, he wasn't.

10 THE WITNESS: He was like a --

11 THE COURT: Temporary?

12 THE WITNESS: I had somebody on vacation or
13 something.

14 THE COURT: I see.

15 THE WITNESS: Or sick or something.

16 THE COURT: So he wasn't one of the permanently
17 assigned good crew that you took the time to check out and
18 get on the truck?

19 THE WITNESS: Right.

20 THE COURT: Okay. Now, you said you didn't call the
21 Commissioner.

22 THE WITNESS: No.

23 THE COURT: The Commissioner called you.

24 THE WITNESS: Right.

25 THE COURT: So you didn't think it was important

1 enough to call him?

2 THE WITNESS: Well, I did, but the way things go
3 among us, I knew he was finding out about it. I talked to
4 the mechanic --

5 THE COURT: Well, you said a little while ago you
6 didn't know how he found out about it.

7 THE WITNESS: Not exactly, I didn't, no.

8 THE COURT: So you just figured you would wait until
9 he called you?

10 THE WITNESS: Right, which was very early the next
11 morning.

12 THE COURT: And he was very angry.

13 THE WITNESS:irate.

14 THE COURT: That didn't bother you?

15 THE WITNESS: Well, yes, it did.

16 THE COURT: Because everybody knows Quigley is a very
17 calm guy.

18 THE WITNESS: Right, but you still get a little
19 nervous. He is still your boss, you know.

20 THE COURT: All right. So earlier you said you made
21 out an incident report, but you didn't say you reported to
22 him, and then later you said you reported to him.

23 Which is it? Did you make out a report for Quigley
24 saying what happened?

25 THE WITNESS: What I think I remember doing was

1 making out a report more like 8-1/2 x 11 lined paper.

2 THE COURT: Okay, not a personnel report, but an
3 incident report.

4 THE WITNESS: Yes.

5 THE COURT: And you said you took the time to make
6 sure that you were very thorough in investigating this whole
7 thing.

8 THE WITNESS: I didn't take the time, I was sent to
9 take the time.

10 THE COURT: And you were very thorough.

11 THE WITNESS: Well, I think so. I mean, I got very
12 involved, let's put it that way.

13 THE COURT: Did you ever talk to the driver?

14 THE WITNESS: About this?

15 THE COURT: Yes. Did you ever ask him what
16 happened?

17 THE WITNESS: Yes.

18 THE COURT: Oh, you did.

19 THE WITNESS: He was back there.

20 THE COURT: Where were you when you asked him about
21 it?

22 THE WITNESS: I think we talked the following day in
23 Special Equipment.

24 MR. WZOREK: I was already on a new truck, Tom. I
25 couldn't have talked with you.

1 THE WITNESS: I remember you being in there.

2 THE COURT: Do you have any more questions?

3 MR. EX: No, we don't have any further questions.

4 THE COURT: Okay. You may step down.

5 Oh, have you got a question?

6 MR. WZOREK: I just want to say one thing.

7 THE COURT: Don't say something. If you got a
8 question, ask it.

9 MR. WZOREK: Okay.

10 BY MR. WZOREK:

11 Q. Are you sure Mr. Madia was the district foreman?

12 A. It was Madia or Whelan.

13 Q. What if I told you it was James Hoffman?—

14 A. Well, it was 1982, '83.

15 Q. Well, then how can you remember everything else so
16 easily?

17 A. Hey, nobody bats a thousand. —

18 Q. Well, okay, I'm glad you said that right now.

19 THE COURT: Don't argue with him.

20 You may step down.

21 (Witness excused.)

22 THE COURT: You got any more witnesses?

23 MS. SMITH: Yes, two brief witnesses, your Honor.

24 THE COURT: Put them on if they're very, very
25 brief.

1 Who are they?

2 MS. SMITH: Raymond Dudzinski.

3 THE COURT: Was his name given in discovery?

4 MS. SMITH: Yes, it was, your Honor.

5 THE COURT: Okay. Now, I'm not talking about the
6 pretrial order now, I'm talking about discovery.

7 MS. SMITH: Yes, we turned over documents signed by
8 him.

9 THE COURT: Okay.

10 MS. SMITH: In the course of discovery and at Mr.
11 Wzorek's deposition.

12 RAY DUDZINSKI,
13 called as a witness, duly sworn, was examined and testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MS. SMITH:

17 Q. Please state your name, sir, and spell it for the
18 court reporter.

19 A. Ray Dudzinski, D-u-d-z-i-n-s-k-i.

20 Q. Are you presently employed by the City of Chicago?

21 A. Yes, ma'am.

22 Q. What is your position?

23 A. District foreman.

24 Q. In the Department of Sewers?

25 A. Sewers.

1 Q. How long have you been with the Department of Sewers,
2 sir?

3 A. About 34 years.

4 Q. How long have you been a district foreman?

5 A. About ten.

6 Q. As a foreman did you ever supervise Eugene Wzorek?

7 A. Yes, ma'am.

8 Q. As Mr. Wzorek's foreman did you ever have occasion to
9 discipline Mr. Wzorek?

10 A. Yes.

11 Q. Let me show you what I have marked for identification
12 as Defendant's Exhibit No. 5 and ask if you recognize that
13 document, sir.

14 A. Right.

15 Q. Do you recognize that document?

16 A. Right.

17 Q. What is that?

18 A. This is a written reprimand regarding wearing a
19 helmet.

20 Q. Is that your signature at the bottom of the page?

21 A. Yes, ma'am.

22 Q. Did you give Mr. Wzorek this written reprimand?

23 A. Yes, ma'am.

24 Q. Prior to issuing this written reprimand did you have
25 give him oral warnings about not wearing a helmet?

1 A. Possibly at times, yes.

2 Q. Do you recall ever warning him about not wearing a
3 helmet?

4 A. I must have to write this up. I might have, you know,
5 warned him on several occasions.

6 Q. Was it your typical procedure to write up an employee
7 for not wearing a helmet prior to giving him oral warnings?

8 A. No, you have to give him oral warning before you give
9 him a written reprimand.

10 Q. So the record is clear, what was the reason for giving
11 Mr. Wzorek this written reprimand?

12 A. For not wearing the helmet.

13 Q. Now, Mr. Dudzinski, let me show you what I have marked
14 for identification as Defendant's Exhibit No. 6 and ask if
15 you recognize that document.

16 A. Yes, ma'am.

17 Q. What is that, sir?

18 A. This is a provisional dock for Mr. Wzorek.

19 Q. What was the reason that you issued that provisional
20 dock as stated on there?

21 A. Well, the provisional dock, actually I had to write it
22 up due to the fact of Commissioner Quigley looking for an
23 extra driver.

24 Q. Can you explain further what you mean by that?

25 A. The 1st District needed an extra driver. We

1 approached Mr. Wzorek, told him to go, and in a phone
2 conversation while I was holding it he refused the
3 Commissioner.

4 Q. So Mr. Wzorek spoke on the telephone with Commissioner
5 Quigley?

6 A. Well, I was asked to him and held it out like this,
7 "The Commissioner would like to talk to you."

8 Q. Did the Commissioner first speak to you?

9 A. Yes.

10 Q. What did Commissioner Quigley tell you?

11 A. He told me to tell Mr. Wzorek to go to the 1st
12 District.

13 Q. Then did you tell Mr. Wzorek that's what's the
14 Commissioner's orders were?

15 A. Right.

16 Q. Then what happened?

17 A. He didn't go, and I was told to write Mr. Wzorek up,
18 which I did.

19 Q. Who told you to write Mr. Wzorek up?

20 A. Commissioner Quigley.

21 Q. And is that your signature that appears at the bottom
22 of the page?

23 A. Yes.

24 MS. SMITH: I have nothing further of Mr. Dudzinski.

25 CROSS EXAMINATION

BY MR. WZOREK:

Q. Okay, Ray, let's talk about the helmet now, okay? Do you remember where the incident was on the helmet?

A. Do I remember which?

Q. The incident on the helmet, where it was at, where it was done at.

A. I believe it was 6th District.

Q. Do you want me to refresh it for you, you know, what's on there?

Okay, Ray, it was on 75th and Kenwood, Ray.

MS. SMITH: Objection. There is no foundation for that.

THE COURT: Yes, there is. The document that you just put forward says 75th and Kenwood right on it.

MS. SMITH: I withdraw that objection, your Honor.

THE COURT: Okay.

BY MR. WZOREK:

Q. All right, Ray, are you positive you ever reprimanded me for a helmet? Are you positive beyond a shadow of a doubt?

A. On which?

Q. On any time, Ray.

A. (Indicating).

Q. No, I know the write-up. I'm talking about had you ever orally told me all the time?

1 A. All the time, no.

2 Q. Okay. Now, here is my question to you, Ray. Was
3 there not a whole crew that was written up for not having a
4 helmet in this situation?

5 A. No, I couldn't say the whole crew per se. —

6 Q. Let me refresh your memory.

7 Does a driver wear a helmet in the truck, Ray?

8 A. Should going from job to job, you know, but he takes
9 it off occasionally.

10 Q. Okay. Now, if I could refresh your memory on this
11 situation, Ray, wasn't it a fact that we were on the street,
12 me, Anthony King, Carl Gibbons, and Reckless, doing a job for
13 over four hours? Do you remember that situation now?

14 A. No.

15 Q. Do you remember writing these four men up?

16 A. Not without looking at my records I couldn't tell.

17 Q. Then you're going by hearsay what you were saying to
18 her.

19 THE COURT: It's not hearsay.

20 MR. WZOREK: Okay.

21 BY MR. WZOREK:

22 Q. Okay. But now this is 75th and Kenwood, Ray.

23 THE COURT: You like that hearsay objection.

24 MR. WZOREK: Your Honor, it sounds good.

25 BY MR. WZOREK:

1 Q. Okay, Ray, have you ever heard of a man being fired
2 for a helmet?

3 A. No.

4 Q. Okay. Now, let's get back to the situation here.

5 Ray. If I was to tell you that we were helping an old lady
6 who was crying and we were out there for four hours pumping
7 water out of her basement and the only way you knew about it
8 was to call me on the radio and I told you how long we were
9 there, would you say that could be possible?

10 MR. EX: Objection, asking for speculation.

11 THE COURT: Overruled.

12 BY MR. WZOREK:

13 Q. Could that be possible, Ray?

14 A. Such as what, just by calling you?

15 Q. Yes. Didn't you call the trucks at times to find out
16 where they were?

17 A. Sure, or give them complaints, yes.

18 Q. And to be answered you have to be answered by the
19 driver, is that not right, when people are working?

20 A. Yes, because he sits with the truck.

21 Q. And when he sits in that truck, he is away from the
22 work site, is he not?

23 A. He should be right in front of the work site or
24 whatever, right.

25 Q. But if there is no parking there he could be a block

1 away and they just take the tools, is that not right?

2 . At times.

3 . So then I would not be by the work site if I was a
block away in the truck, is that true?

A. Right.

Q. Then I would not need a helmet?

7 A. You still would have to have it with you.

8 Q. We are talking about wearing it, is what I'm written
9 up for.

10 Now, if I was to tell you that you and Morris
11 O'Connor came out to that site and you weren't wearing
12 helmets, what would you say?

13 A. In which way?

14 Q. Well, when you go to the work site the bosses are
15 supposed to wear helmets too, are they not?

16 A. Right.

17 Q. It seems like what we are talking now, no one had a
18 helmet that day, so what I'm referring to you, if no one had
19 a helmet that day, wouldn't the other three be written up
20 too?

21 MS. SMITH: Objection as to relevancy.

22 THE COURT: Overruled.

23 BY MR. WZOREK:

24 Q. Isn't that true, Ray?

25 A. Yes. —

1 Q. So in other words, you really don't remember
2 everything about this situation, it's so long ago?

3 A. Right.

4 Q. So the point what I'm trying to get at, what if I was
5 to tell you that at that time I didn't have a helmet because
6 it was stolen?

7 A. I don't remember that far back.

8 Q. And if I was to tell you that I paid Morris O'Connor
9 \$12.50 for a new helmet --

10 A. That's between you and him.

11 Q. And Morris O'Connor was with you on this day when you
12 came out to the district, wasn't he, out at 75th and
13 Kenwood?

14 MS. SMITH: Objection, your Honor, he is testifying.

15 THE COURT: Sounds like it.

16 BY MR. WZOREK:

17 Q. Was Morris O'Connor with you when you came out here?

18 A. Was he out there?

19 Q. With you.

20 A. I'm is not disputing you. I'm just saying I can't
21 remember that far.

22 Q. Didn't Morris O'Connor say to you, "We have got to
23 write him him up because Quigley will get hot"?

24 A. Speculating I wouldn't want to answer that.

25 Q. But you can't say it didn't happen?

1 A. I can't say it didn't.

2 Q. What I'm saying, so in other words, if I was paying
3 for a helmet, \$12.50, it would be up to the Department to
4 hand me that helmet, would it not?

5 A. Or some representative.

6 Q. Well, Ray, I'm still waiting.

7 The point is what I'm trying to say here is the way
8 I got another helmet is Sam Keys gave me one.

9 MR. EX: Objection, argumentative.

10 MR. WZOREK: I'm sorry about that.

11 THE COURT: It also sounds like testimony, and I
12 don't -- unless you want to switch places.

13 MR. WZOREK: No. Well, see, I can't get the whole
14 thing out because he don't remember.

15 THE COURT: You're going to get to testify again.

16 MR. WZOREK: Oh, okay.

17 BY MR. WZOREK:

18 Q. So in other words, it's possible this happened, that
19 there was four guys written up?

20 A. It's possible, right.

21 Q. So you're not denying that.

22 A. No.

23 Q. Let's get to the provisional dock, okay, Ray?

24 Do you see anything wrong with this one?

25 A. You mean at the time? I would say no.

1 Q. Is my name on there, Ray?

2 A. Right here, "Employee."

3 Q. Ray, I'm talking about my signature, Ray, like on this
4 one.

5 MS. SMITH: Your Honor, if the Court could instruct
6 Mr. Wzorek to step back a little, we can't hear and --

7 THE COURT: Speak up so you can be heard.

8 THE WITNESS: I don't believe there is a spot where
9 you sign it.

10 BY MR. WZOREK:

11 Q. But isn't the employee supposed to sign that?

12 A. Sometimes the employee refuses.

13 Q. Okay. Now, that's what I was getting to, Ray. If an
14 employee refuses to sign it, Ray, aren't you supposed to
15 write in "Refused to Sign"?

16 A. Yes. --

17 Q. Is there any "Refused to Sign" on here, Ray?

18 A. Not on that one.

19 Q. Let's go back to that year, 1982, June.

20 Do you remember where I was when you told me that
21 they wanted me to report in?

22 A. You were in the garage.

23 Q. I have to -- all right, how would I put this?

24 Do you know Gino Neri?

25 A. Yes.

1 Q. All right. Didn't Gino Neri have a heart attack in
2 that year?

3 A. I knew he had a heart attack, but I can't remember
4 what year.

5 Q. Now, Ray, wasn't Gino Neri the man that was in that
6 garage as an extra because of his heart and everyone was
7 giving him a break?

8 MS. SMITH: Your Honor, I would like to object to
9 that. He is testifying here.

10 THE COURT: No, that's a fair question.

11 Is that true?

12 THE WITNESS: Your Honor, I couldn't remember that
13 far back. I can say he had a heart attack, but I can't say
14 that year.

15 THE COURT: Did they put Neri in the garage to give
16 him a break at any time?

17 THE WITNESS: I couldn't swear to that.

18 THE COURT: You don't remember?

19 THE WITNESS: No, sir.

20 THE COURT: Do you remember when he came back to
21 work?

22 THE WITNESS: No, not without proper records maybe,
23 otherwise, no.

24 BY MR. WZOREK:

25 Q. As a matter of fact, Ray, in 1982, wasn't it true that

1 you were just substituting for a couple of weeks for Madia on
2 vacation?

3 A. That I was substituting?

4 Q. For Madia while he was on vacation?

5 A. God, that's hard to say. You know what I'm saying?
6 You know how we were switched around.

7 Q. I know, I know, Ray.

8 Now, the point is if Gino Weri was the extra man in
9 the garage, shouldn't he have been the one that Commissioner
10 Quigley called for?

11 A. That I couldn't answer.

12 Q. If I was to tell you that I was on the work site and a
13 ten o'clock call came in and told us to come in, what would
14 you say to that?

15 A. If the work site called in I would have to go to
16 Commissioner Quigley's orders and give them to you.

17 Q. But he did not specifically mention me, he said, "Give
18 me an extra driver."

19 A. He knew your name.

20 Q. I understand he knew my name, but what I'm trying to
21 state is I was not the extra driver.

22 Can you dispute this.

23 MS. SMITH: Your Honor, he is arguing with the
24 witness.

25 THE COURT: No.

1 THE WITNESS: You can't dispute you weren't either.
2 I mean, we can't go back six years.

3 BY MR. WZOREK:

4 Q. Well, Ray, then in other words, if you can't go back
5 six years and nobody knows what's happening, how can you be
6 fired for this in your opinion?

7 A. I mean, you were reprimanded for it right here,
8 suspended, call it provisional dock.

9 Q. Now, wait a minute.

10 Do you remember when I came in and you gave me that
11 order from Quigley or --

12 A. You were in the garage, I knew that.

13 Q. I came in, Ray. You don't know where I was or
14 nothing?

15 A. You said you were in the garage.

16 Q. I didn't say I was in the garage. I was on the truck
17 and you called me, which is what I just further stated.

18 MR. WZOREK: Did I not, your Honor?

19 THE WITNESS: You were still in the garage, weren't
20 you?

21 BY MR. WZOREK:

22 Q. Well, after getting out of the truck I come into the
23 garage because you called us in, all right?

24 A. What truck?

25 Q. 157, the dump truck with Ike's gang and we were by

1 Lake Shore Drive.

2 All right, you can't answer?

3 A. I can't answer. I don't remember.

4 Q. Is it not a fact that the phone call and who you were
5 talking to was not Commissioner Quigley, but Monico?

6 A. Sure, Monico asked me first who was the extra driver.
7 We told him. Then Commissioner Quigley come in when you
8 refused the first time.

9 Q. When I came in didn't I tell you I didn't want to go
10 because I was sick?

11 A. You said you were sick, but until you got the order
12 you didn't say nothing.

13 Q. But I told you I was sick, right?

14 A. Yes.

15 Q. Did I not get on the phone with Monico and tell him I
16 was sick?

17 A. That I don't know.

18 Q. Ray, you just stated that you held the phone for me.

19 A. For Commissioner Quigley, right.

20 Q. Well, I only talked to Monico.

21 A. You talked to both.

22 Q. All right. Well, I'm going to show you a document,
23 Ray, because I don't believe you're a doctor, are you?

24 A. No.

25 Q. I don't think you can refer if anybody is sick or

1 not.

2 A. No.

3 MS. SMITH: Your Honor, can you see what document he
4 is referring to here?

5 THE COURT: What document are you referring to?

6 MR. WZOREK: That's the doctor's note from 1982.

7 THE COURT: What doctor?

8 MR. WZOREK: Dr. Harold Weiss.

9 MS. SMITH: What does the note say?

10 THE COURT: I think we are about to find out.

11 MR. EX: We would object to foundation.

12 THE WITNESS: I'm no doctor.

13 BY MR. WZOREK:

14 Q. Are you disputing a doctor?

15 THE COURT: Wait a minute, are you saying you showed
16 him this note?

17 THE WITNESS: Your Honor, what I'm stating is when I
18 left the garage -- ←

19 THE COURT: Did you show him this note?

20 THE WITNESS: I didn't get it until after I come ←
21 your Honor, what I'm trying to state is I was sick, I told
22 him I was sick.

23 THE COURT: But the note doesn't do you any good
24 until you put it in evidence by some other method. You can't
25 put it in through him because he never saw it. That's your

1 thing, see, and you're not under oath right now and you're
2 not on the witness stand and you didn't write the note.

3 MR. WZOREK: I can put it on later or --

4 THE COURT: Well, if you do it right, yes.

5 BY MR. WZOREK:

6 Q. Okay. So in other words, it's possible that I could
7 have been sick?

8 A. I can't tell when a person is sick.

9 THE COURT: All things are possible. Come on.

10 BY MR. WZOREK:

11 Q. In other words, I did talk to Monico on the phone?

12 A. I don't know who you talked to after we got through
13 with Quigley.

14 Q. And I left the district before you wrote this, did I
15 not?

16 A. You knew what was going to happen before you left.

17 Q. I left the district because I already talked to
18 Monico.

19 A. Yes, you must have.

20 Q. When I was leaving the district, did you not make the
21 statement on the phone, "He don't look sick to me"?

22 A. No.

23 MR. WZOREK: I don't know how to get this in
24 evidence.

25 THE COURT: You don't do it through this witness.

1 BY MR. WZOREK:

2 Q. In other words, is one dock, though, whether I was
3 sick or not, in three years past is that enough to fire a man
4 for, do you think?

5 MS. SMITH: Objection, this witness has no --

6 THE COURT: Sustained.

7 MR. WZOREK: That's all I can do then.

8 THE COURT: Any further questions?

9 MS. SMITH: Just, two, your Honor.

10 REDIRECT EXAMINATION

11 BY MS. SMITH:

12 Q. Mr. Dudzinski, at the time you wrote Mr. Wzorek up for
13 not having a helmet, did he inform you at that time that his
14 helmet was stolen?

15 A. Not to me, unless he was dealing, like he said, with
16 Mr. O'Connor.

17 Q. As a foreman don't you have discretion to make
18 assignments with respect to your drivers?

19 A. Yes.

20 Q. And it is your decision where to send those drivers
21 and where to assign them?

22 A. Right, until there is an emergency.

23 THE COURT: What's this got to do with the
24 cross-examination?

25 MS. SMITH: Well, in terms of Mr. Wzorek's testimony

1 as to whether or not he was in a garage and another driver
2 was elsewhere. It's within his discretion.

3 That's all, your Honor.

4 MR. WZOREK: One last question.

5 RECROSS EXAMINATION

6 BY MR. WZOREK:

7 Q. About being sick, Ray, if a person is sick and he
8 wishes to go home, isn't that better for him to do than to be
9 sick on the truck and maybe create an accident?

10 MS. SMITH: Objection, your Honor.

11 THE COURT: Sustained. Pretty good try, though.

12 BY MR. WZOREK:

13 Q. Does the employee, if he is sick, have the right to go
14 home?

15 A. Can't stop him. He has to sign out and go home.

16 Q. If the employee is sick and he can verify he has been
17 sick, should he have been docked?

18 MS. SMITH: Objection.

19 THE COURT: Sustained.

20 BY MR. WZOREK:

21 Q. Do you give docks to sick employees?

22 MS. SMITH: Objection.

23 THE COURT: Overruled.

24 BY THE WITNESS:

25 A. How can I give a dock to a sick employee.

1 BY MR. WZOREK:

2 Q. So then in other words, Ray, what you're saying, if a
3 person was sick this could be a big mixup?

4 THE COURT: Are you arguing now?

5 MR. WZOREK: No.

6 THE COURT: Yes, you are. Have you got any more real
7 questions?

8 MR. WZOREK: No, that's just about it.

9 THE COURT: Or a couple speeches.

10 MR. WZOREK: Not yet.

11 THE COURT: You may step down, sir.

12 THE COURT: You may step down, sir. Thank you.

13 (Witness excused.)

14 MS. SMITH: We have one very brief witness, your
15 Honor.

16 THE COURT: You said that last time about fifteen
17 minutes ago.

18 MS. SMITH: Well, I think my direct was quite short,
19 but Mr. Wzorek took more time than I expected.

20 THE COURT: Mr. Wzorek, quit making speeches in your
21 questions. You'll save everybody a lot of time, including
22 yourself.

23 BERNARD EARL YOUNG,
24 called as a witness herein, duly sworn, was examined and
25 testified as follows:

DIRECT EXAMINATION

BY MS. SMITH:

A. Bernard Earl Young.

Q. Sir, directing your attention to June of 1984, were you employed at the Department of Sewers?

A. Yes, ma'am.

Q. What was your title?

A. June of '84 I was a laborer.

Q. And were you actually performing the duties of a laborer in June of 1984?

A. No, ma'am.

Q. What duties were you performing?

A. Acting chief timekeeper.

Q. How long had you been performing in that capacity?

A. Timekeeper, about nineteen years.

Q. Who appointed you to the position of acting chief timekeeper?

A. Commissioner Barnes.

Q. You stated that was for the past nineteen years.

A. As a position of acting chief timekeeper?

Q. That's correct.

A. It was Commissioner Barnes.

Q. How long were you performing the duties of a timekeeper?

A. Oh, about nineteen years.

1 Q. Who appointed you to that originally?

2 A. Oh, Commissioner Quigley..

3 Q. Once Commissioner Barnes came into office --

4 THE COURT: Didn't you put this witness on already
5 for your direct examination?

6 MS. SMITH: Mr. Wzorek did. I just have a few brief
7 things --

8 THE COURT: No, no, no, you asked if you could take
9 him out of order to complete your direct examination after
10 Mr. Wzorek did his, and I allowed you to. Now you're trying
11 to get a second shot with him.

12 MS. SMITH: Your Honor, I believe that we did not
13 call him as my witness. I examined him on cross examination.

14 THE COURT: No, no, no, no, you did not. You asked
15 me if you could inquire by direct examination of this and
16 another witness that Mr. Wzorek put on as your witnesses and
17 I said yes, you could, and then you proceeded because Mr.
18 Wzorek put him on as an adverse witness and you wanted to
19 proceed beyond the extent of the direct examination to your
20 own, and I allowed you to do it with two witnesses, this
21 witness and another.

22 Now, you can put this witness on if you want in
23 rebuttal, but not in your case in chief.

24 MS. SMITH: Then I will call him in rebuttal, your
25 Honor.

1 THE COURT: Have you finished your case in chief?

2 MS. SMITH: Yes, we have rested.

3 THE COURT: All right, then you can call him in
4 rebuttal.

5 MS. SMITH: Thank you.

6 THE COURT: Wait, Mr. Wzorek gets rebuttal first.

7 MS. SMITH: You may step down, Mr. Young.

8 (Witness excused.)

9 THE COURT: You don't understand, Mr. Wzorek.

10 MR. WZOREK: No, not at all.

11 THE COURT: They have finished their case. Now you
12 can testify to things you want to put in like that doctor's
13 letter and your arguments about some of the things that you
14 say people said that weren't true. You can now testify in
15 rebuttal.

16 You, Mr. Young, step down, but be available because
17 they want to call you in rebuttal to some of the earlier
18 testimony.

19 MR. EX: Just as a point of order, we do want to
20 introduce our exhibits into evidence. We have no objection
21 if you prefer to wait until after he is done in rebuttal or
22 we can make that motion now.

* 23 THE COURT: You just rested, sir.

24 Take the stand, Mr. Wzorek.

25 MR. EX: Your Honor, I just want to state for the

1 record that --

2 THE COURT: The record is quite clear.

3 MR. EX: -- that we would like to request to put
4 those in. I understand that Ms. Smith, I believe, made an
5 inadvertent statement that the case had rested.

6 THE COURT: Didn't sound very inadvertent to me.

7 MR. EX: I would just like to request to have the
8 opportunity before he puts on his rebuttal to reopen our case
9 for the purpose of putting in our exhibits, your Honor.

10 THE COURT: What are your exhibits?

11 MR. EX: They were the exhibits that were tendered to
12 the Court with the pretrial order.

13 THE COURT: That doesn't help me. What are your
14 exhibits?

15 MR. EX: Your Honor, our exhibits, 31, first being
16 Mr. Wzorek's employment history chart. -

17 THE COURT: Have you got a copy for me?

18 MR. EX: Yes, your Honor, I can give you a copy.

19 THE COURT: There was no stipulation to these
20 exhibits, was there?

21 MS. SMITH: Yes, there was, your Honor.

22 THE COURT: No, Mr. Wzorek never stipulated in
23 pretrial to any exhibits, maybe to foundation and relevance,
24 but not to admissibility.

25 MS. SMITH: Okay.

1 THE COURT: Give them to Ms. LaCorte, please.

2 Did you give a copy to him?

3 MR. EX: Yes.

4 THE COURT: Go get your set and take your seat at the
5 table.

6 THE COURT: No. 1.

7 MR. EX: No. 1 is Mr. Wzorek's employment history
8 chart, your Honor.

9 THE COURT: No foundation was ever laid for this.

10 MR. EX: I believe that this is one of the documents
11 that there was a stipulation as to the foundation.

12 THE COURT: Let me see the stipulation. Let me see
13 it.

14 Have you got your pretrial order there?

15 MR. EX: Yes, your Honor.

16 THE COURT: What page is your list?

17 MR. EX: I believe on page 15 we list our schedules
18 of exhibits.

19 Then on page --

20 THE COURT: Page 15, did you say?

21 MR. EX: Right. That's where our schedule of
22 exhibits begin, your Honor.

23 THE COURT: Not in the copy you just gave to me. It
24 says page 12.

25 Have I got the wrong pretrial order or do you have

*
1 the wrong pretrial order? ~

2 MR. EX: I am checking because I know that we had to
3 make a modification.

4 Yes, I regret, your Honor, I believe that I gave you
5 the draft. I apologize.

6 THE COURT: What do you mean, the draft? Is this the
7 one you gave me?

8 MR. EX: No, that's not the one that we submitted.
9 We had a draft before we had a chance to confer with Mr.
10 Wzorek.

11 THE COURT: Give me a copy of the other one.

12 MR. EX: I apologize, your Honor.

13 THE COURT: I have it here. The one you have given
14 me also starts on page 12. Have you got one I have never
15 seen before? +

16 MR. EX: Well, your Honor, I believe that what
17 happened is there were two that were submitted to you, one
18 when we initially met with you and had not had a chance to
19 confer and then one after we had been instructed --

20 THE COURT: Do you have a copy of it?

21 We will recess this trial for an hour and five
22 minutes until quarter to four. We will go on with the other
23 trial. We'll take a recess here, and then you better have
24 all your stuff lined up and ready, sir. I don't want to
25 waste any more time on this case.

1

MR. EX: I apologize, your Honor.

2

THE COURT: So be it.

3

(Recess taken.)

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1 MR. EX: If I may approach the bench with the final
2 copy of the final pretrial order.

3 THE COURT: Oh, yes, yes, please. Give that to Ms.
4 LaCorte.

5 Now, this is the final, final?

6 MR. EX: That's right. That was the copy after we
7 had a chance to consult with one another.

8 THE COURT: All right. Now, you were giving me your
9 exhibits.

10 MR. EX: Right. We were now on page 12, your Honor,
11 the beginning of the Respondent's schedule of exhibits.

12 THE COURT: Well, I thought you were on page 12.

13 MR. EX: Right.

14 THE COURT: But you told me this morning it was page
15 15.

16 MR. EX: Well, see, there was a misunderstanding in
17 that I didn't know whether you were looking at the final,
18 final copy or the original version that was filed.

19 THE COURT: I was looking at the one that said page
20 12, this one.

21 MR. EX: Right. That is the final, final.

22 THE COURT: All right. Now, where were we? Oh, you
23 wanted to offer some exhibits.

24 MR. EX: Right. We wanted to offer our exhibits.

25 THE COURT: Let me see them. Do I have them up

1 here?

2 MR. EX: Yes, prior to the recess we tendered a full
3 set.

4 THE COURT: Exhibit 1 is the employment history
5 chart. Now, there was no stipulation to admissibility put
6 here, was there? Where is the stipulation?

7 MR. EX: Your Honor, our understanding was that there
8 was -- when we went through all these exhibits with Mr.
9 Wzorek, we went through with the understanding that he had a
10 right to object and he has placed his objections to our
11 exhibits on page -- the bottom of page 20, your Honor, and we
12 went through all of our exhibits as to, you know,
13 specifically as to foundation in particular, and he had no
14 objections to any of that and we asked him as to which ones
15 did he have the objections and those were the ones we
16 incorporated on the bottom.

17 THE COURT: Starting at C-4?

18 MS. SMITH: That's correct, your Honor.

19 THE COURT: So just 28, 29 and 30?

20 MS. SMITH: And 22.

21 MR. EX: Yes, and 22 also.

22 THE COURT: Just a minute then.

23 Running through these, the employment history chart,
24 the appropriation ordinance of the City of Chicago, Pounian's
25 status change of the 10th of January, rating system for

1 probationary period of service on May 3rd, City of Chicago
2 reprimand, City of Chicago notice of dock.

3 Exhibit No. 7, Mr. Wzorek, it says: "Mr.
4 Sommerford, the following employee has been cited for poor
5 performance: Eugene Wzorek." What is that? June 26, 1984?

6 MR. WZOREK: That's when Sommerford cited me for poor
7 performance, but didn't give no reason.

8 THE COURT: Was that just a couple of days before you
9 were fired?

10 MR. WZOREK: Yes, sir.

11 THE COURT: All right, admitted.

12 June 23th, from Pounian to Barnes. Barnes never saw
13 it though, right?

14 MR. WZOREK: Right, sir.

15 THE COURT: All right. 9, probationary period
16 service reporting form; 10, discharge; 11, all right.

17 MR. EX: No. 12 your Honor, we are withdrawing.

18 THE COURT: 12 is withdrawn. Why?

19 MR. EX: We never admitted it, nor do we --

20 THE COURT: What does it do?

21 MR. EX: It just really shows his time records for
22 the year 1984. It's just a summary of his time. We were
23 not intending to use it as part of our case.

24 THE COURT: Mr. Wzorek, have you seen it and do you
25 want it in?

1 MR. WZOREK: The 7-2/3 days, your Honor, is that the
2 timesheet, this here?

3 MR. EX: Yes, that, I believe, is part of --

4 MR. WZOREK: That just shows I wasn't off ten days,
5 your Honor.

6 THE COURT: Do you want it in?

7 MR. WZOREK: Yes, I guess so.

8 THE COURT: Then you can put it in.

9 MR. WZOREK: Okay. You hold it, though, for a
10 minute.

11 No. 13, okay; 14, okay.

12 15 is not in evidence. That's a matter of
13 pleading.

14 MR. EX: That's correct, your Honor, those are the
15 answers to interrogatories, which were never in fact filed
16 with the Court. --

17 THE COURT: Whose answers?

18 MR. EX: Both the City's answers and Mr. Wzorek's.

19 THE COURT: It's part of the permanent record and I
20 want it to be part of the permanent record because you never
21 answered his objections -- excuse me, you never made clear
22 your objections, and you're stuck with them, because he asked
23 you perfectly legitimate questions that you never answered in
24 his interrogatories about your witnesses.

25 16, that's also part of the pleadings.

1 MR. EX: 17 and 18, your Honor, we are withdrawing as
2 trial exhibits. These were merely included as courtesy
3 copies because they were part of our trial brief which we
4 submitted.

5 THE COURT: Fine.

6 MR. EX: The same would go with No. 20, your Honor,
7 as well.

8 THE COURT: And 19?

9 MR. EX: Yes, we would request that be admitted as
10 well.

11 THE COURT: Admitted?

12 MR. EX: Yes.

13 THE COURT: Why?

14 MR. EX: That was just used in the examination of Mr.
15 Lucille showing his motive, the fact that he has another
16 lawsuit pending against the City. That's all it's for,
17 Judge.

18 THE COURT: All right. 20 is withdrawn?

19 MR. EX: Correct.

20 MS. SMITH: Your Honor, if I may impose one thing
21 here, I don't know who this gentleman is in Mr. Wzorek's
22 case. I believe he is just a member from the audience.

23 MR. WZOREK: He is trying to help me because I'm
24 confused. He is from the audience.

25 THE COURT: Who are you, sir?

1 MR. VILLA: I was looking through the papers, and it
2 kind of confused him a little bit, so I --

3 THE COURT: Who are you?

4 MR. VILLA: My name is Armando Villa.

5 THE COURT: V-i-l-l-a?

6 THE COURT: Are you a friend of Mr. Wzorek?

7 MR. WZOREK: No. I just met him.

8 THE COURT: I don't think you should be -- thank
9 you.

10 MS. SMITH: Thank you.

11 THE COURT: Besides, Mr. Wzorek is not doing too
12 bad.

13 MR. VILLA: Yes, I think he is doing fine.

14 THE COURT: 21.

15 MR. EX: We move to admit that as well, your Honor.

16 THE COURT: Well, do you have the reciprocal one
17 where the 27 people from that ward were fired?

18 MS. SMITH: Your Honor, I believe Mr. Wzorek has made
19 representations as to the number of the 27th ward that were
20 fired, although there has never been any evidence to that
21 effect.

22 THE COURT: Oh, yes, there is evidence to it, but
23 there has never been any contradiction to it.

24 MS. SMITH: Well, that was the purpose of calling Mr.
25 Young as a rebuttal witness, your Honor.

1 THE COURT: Mr. Young could have said that when he
2 put on his testimony in the first place, which was well after
3 Mr. Wzorek spoke in his case.

4 22, exit interview. Have we ever seen this before?

5 MR. EX: Yes, your Honor, I believe that that has
6 been used by both parties.

7 THE COURT: All right, that's allowed.

8 23.

9 THE COURT: Wait a minute, was 22 -- what were you
10 objecting to?

11 MR. WZOREK: That I never really got one, your Honor.

12 THE COURT: One what?

13 MR. WZOREK: Exit interview. I wasn't even there
14 when it happened.

15 THE COURT: Well, you testified to that, but they
16 have enough in to get it in evidence.

17 MR. WZOREK: Right.

18 THE COURT: 23.

19 MR. EX: 23, your Honor, is the Rule 9 of the
20 personnel rules.

21 THE COURT: No objection?

22 What are the objections now?

23 MR. EX: The objections, your Honor, I believe only
24 relate to -- well, 22 we just dealt with, and the other three
25 are Nos. 28, 29, and 30.

1 THE COURT: Where does 25 come from? Oh, I see,
2 okay, that's allowed.

3 26, 27 --

4 MR. EX: If I just may say, your Honor, that 28, 29
5 and 30 were put on by the City for the same reasons that 25
6 was and 27 were.

7 THE COURT: Which is what?

8 MR. EX: To show the background and motive of that
9 particular witness that was put on by --

10 THE COURT: Was Gorski fired?

11 MR. WZOREK: No, sir.

12 THE COURT: Well, we will take all those. All
13 right.

14 MR. EX: And the last one was 31, which was not
15 contested.

16 THE COURT: What was that?

17 MR. EX: That was a letter to all employees of the
18 City of Chicago from Mayor Washington. That was identified.

19 THE COURT: We'll take those.

20 Now, do you have any rebuttal testimony or are you
21 ready to rest?

22 MR. WZOREK: Do I give a speech on why --

23 THE COURT: No, you wanted to put the doctor's letter
24 in evidence --

25 MR. WZOREK: Oh, yes, your Honor.

1 THE COURT: That says you weren't present on a
2 certain day.

3 MR. WZOREK: Right.

4 THE COURT: You also indicated that you wanted to
5 rebut some of the testimony that was said.

6 MR. WZOREK: Yes, sir.

7 THE COURT: All right. I have got only a limited
8 amount of time.

9 MS. SMITH: Your Honor, at this moment would it be
10 appropriate to read into the record the uncontested facts?

11 THE COURT: I have uncontested facts all here.

12 MS. SMITH: Will they be admitted?

13 THE COURT: They're admitted. They're uncontested.

14 THE COURT: Now, your exhibits that are in are
15 Sommerford's card, your ID card, something from -- a subpoena
16 from Mitchell, that's not a document, and all the other
17 exhibits that are not in testimony, also the ward cards for
18 Wards 16 and 10, the provisional dock, which is already in;
19 your No. 3, the copy of Dr. Weiss' letter that says that
20 you're under care for the treatment of viral pneumonia on
21 June 18th. Is that the one you have been trying to get in?

22 MR. WZOREK: I have been trying to get the one in
23 where he said I was docked, but I went home and I --

24 THE COURT: Which date?

25 MR. WZOREK: That was the date of June -- let's see

1 right here, June -- let's see, '82, it was, your Honor.

2 THE COURT: June 18th?

3 MR. WZOREK: Yes.

4 THE COURT: You have already got that in.

5 MR. WZOREK: Oh, I got that in? Then I got the one
6 -- this is what I contested about not having all that time
7 off because --

8 THE COURT: Which one is this?

9 MR. WZOREK: That's June 18th, when they said --

10 THE COURT: You have got it in.

11 MR. WZOREK: I got that in?

12 THE COURT: Well, it was in your uncontested.

13 MR. WZOREK: Oh. Well, then I couldn't have been
14 there when they said I broke the truck.

15 MR. EX: Could I see that?

16 THE COURT: That's his Plaintiff's No. 3.

17 MR. EX: Your Honor, I believe that there was -- it
18 was my understanding that that was conditionally admitted
19 subject to his proving up the foundation, and we haven't yet
20 seen any testimony or anything that would prove up that
21 particular document.

22 THE COURT: You'll have to testify that you received
23 it in the mail.

24 MR. WZOREK: I got it when I was in his office, he
25 gave it to me.

1 THE COURT: You're not on the stand right now. We
2 are going through these exhibits right now.

3 MR. WZOREK: Oh.

4 THE COURT: All right. Defendant's J, probationary
5 system, that's already in.

6 Plaintiff's 5 is what, the Department of Sewers, the
7 layoffs and the reasons therefor.

8 26 is -- we already got that in from the other
9 side.

10 His No. 7 is in, his No. 8 is in already from the
11 other side, and Plaintiff's No. 9, letter of September 23rd
12 from Mr. Barnes saying that all public records must be
13 maintained.

14 Is there anything else you didn't get in?

15 MR. WZOREK: I don't know, is the Daley check in
16 there for a thousand dollars, your Honor?

17 THE COURT: No, it's not. Have you got it?

18 MR. WZOREK: That's the one that was lost, your
19 Honor. They talk about it in the deposition and everything.
20 That's why my first lawyer was gone, because when I asked for
21 it he lost it.

22 THE COURT: He lost the Daley check?

23 MR. WZOREK: Yes.

24 THE COURT: Well, you have got oral testimony. Come
25 up here and get on the stand and put your exhibits in.

1 EUGENE WZOREK,
2 called as a witness herein, having been first duly sworn,
3 testified in the narrative as follows:

4 THE COURT: Tell me what they are and why you want
5 them in evidence.

6 THE WITNESS: Even the doctor's note?

7 THE COURT: You're under oath; do you remember that?

8 THE WITNESS: Yes. Even the doctor's note?

9 THE COURT: Yes, everything.

10 THE WITNESS: I'm sorry for taking this much time and
11 that, but --

12 THE COURT: You have just as much right to it as
13 every other litigant.

14 THE WITNESS: Well, your Honor, what I contend is
15 that they fired me politically.

16 THE COURT: No, no, no, wait, I don't want an
17 argument.

18 MR. WZOREK: Oh.

19 THE COURT: I know all that. I want you to put your
20 evidence. What have you got?

21 THE WITNESS: Okay, I have got the notes from the
22 doctors showing that I couldn't have been there the day they
23 said I did that.

24 THE COURT: All right, you have got one from Dr.
25 Weiss on July 1, 1988. You received that from him in the

1 mail?

2 THE WITNESS: I got it right in his office.

3 THE COURT: Oh, he handed it to you?

4 THE WITNESS: Yes. He wrote it and signed it.

5 THE COURT: What about this thing from July 1st?

6 That's another one.

7 THE WITNESS: They're not the same, are they?

8 THE COURT: No.

9 THE WITNESS: See, they were for the two things.

10 One is for June 18th, 1984, and one is for the other one in
11 July, in--

12 THE COURT: June 21st.

13 THE WITNESS: That's the one you asked me about.

14 THE COURT: Is that Dr. Weiss?

15 THE WITNESS: Referred me to a psychiatrist. That's
16 the one you asked me to bring with the W-2 forms.

17 THE COURT: Well, that was earlier to find out if you
18 were competent. That's not in evidence in this case. We
19 will make it a matter of record as pretrial.

20 This is the letter from Dr. Weiss that says that Mr.
21 Wzorek is competent to testify from the psychiatrist.

22 Do you recall that? You might not have been here
23 pretrial. The issue came up as to whether or not I would
24 let Mr. Wzorek go forward testifying because he showed great
25 distress in court one day some months ago, and I told him

1 that I wanted an indication that he could go forward, and
2 this is it, but we will make it part of the record but not
3 part of the testimony in the trial in chief.

4 No objection to the other two letters?

5 MS. SMITH: What are the dates thereon, your Honor?

6 THE COURT: Both dated July 1st, 1988, Dr. Weiss from
7 his records -- each one is from his records -- as to his
8 inability to work.

9 MR. EX: Your Honor, you have already ruled on the
10 foundation of it, but we would object on the grounds that
11 nobody from the City ever had notice of those particular
12 documents.

13 THE COURT: If we compare the lack of notice that the
14 City got to the lack of notice to the plaintiff, that would
15 make this seem like a pimple on the behind of eternity.

16 These will be admitted.

17 THE WITNESS: Is that the one from --

18 THE COURT: It was not a surprise to anybody that he
19 was saying he was sick on those days and that has been quite
20 clear from the beginning, including the testimony of the
21 witnesses.

22 What else have you got?

23 THE WITNESS: I got tickets from the 27th Ward.
24 Quigley used to make you take them.

25 THE COURT: Yes, there was testimony supporting

1 these. These are the 27th Ward Regular Democratic Club
2 tickets.

3 THE WITNESS: And this is a check or --

4 THE COURT: Group exhibit, mark them, please.

5 THE WITNESS: This is a money order. Madia sold me
6 the tickets for Edward Burke and the Jane Byrne one is
7 missing. He said he didn't sell tickets.

8 THE COURT: This was testified to also. This is the
9 money order for the Volunteers for Edward Burke.

10 THE WITNESS: These are the raffle tickets Madia
11 sold.

12 THE COURT: That's got an exhibit number. No,
13 you're going to have to mark these consecutively.

14 THE WITNESS: These are the tickets that Madia
15 sold. He sold them with his position.

16 THE COURT: Madia is selling his tickets for the Old
17 Neighborhood Italian American Club Dream Vacation Raffle.
18 Admitted.

19 THE WITNESS: The rest of the stuff, your Honor, the
20 lawyer lost. That's why I got rid of them. I had \$350 a
21 year for the last seven years --

22 THE COURT: I only want what you've got.

23 THE WITNESS: Okay. The rest were lost by the
24 lawyer. That's why I didn't hire no lawyer.

25 THE COURT: The rest of the tickets.

1 THE WITNESS: Yes, and here is like Swinarski's
2 tickets he would give you like this and stuff.

3 THE COURT: Ticket to the cocktail party for Mr.
4 Swinarski. Everybody would want to go to that, I'm sure.

5 THE WITNESS: That's about it, because the rest were
6 gone.

7 THE COURT: Now, your job now, sir, is you said you
8 wanted to testify -- you tried to do it when you were asking
9 questions -- but you wanted to testify to say that some of
10 the things that the City's witnesses said were not so.

11 Have you made notes?

12 THE WITNESS: I do better when it's in my mind
13 because when I got the notes I got messed up.

14 THE COURT: I think rather than have you do it
15 tonight, because I have got some other people to work with,
16 I'm going to tell you to come in tomorrow morning at 10:30.

17 THE WITNESS: Okay.

18 THE COURT: All right, 10:30 tomorrow morning we will
19 continue this case. I managed to make some space tomorrow
20 morning. That's what Ms. Brotherson just came in for. And
21 I'll go to the other matter right now.

22 MR. EX: I would like to at least file our motion for
23 a directed verdict that was denied, just for the record.

24 THE COURT: You don't have a prayer of winning a
25 motion for directed verdict. It's a waste of your time and

1 my time and taxpayers' money for you to put in a motion for
2 directed verdict.

3 MR. EX: Your Honor, just for the record if I could
4 have it filed.

5 THE COURT: All right. See you all tomorrow.

6 (Adjournment to July 6, 1988, at 10:30 a.m.)
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